

under Rule 8 of the Federal Rules of Appellate Procedure. Def. Andrade's Mot. for Stay at 1 (ECF No. 66).

The factors that could support a stay are nearly identical to those that justify a preliminary injunction—an analysis that the Court conducted less than a week ago. The Court should assess “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure other parties interested in the proceedings; and (4) [whether] public interest [favors a stay].” *Weingarten Realty Investors v. Miller*, 661 F.3d 904, 910 (5th Cir. 2011) (internal quotation marks and citations omitted).

Though Defendant Andrade has barely attempted to make a showing on these factors, it is clear that each prong weighs heavily against her. The Court's 94-page opinion conclusively resolves the question of likelihood of success on the merits, carefully applying the relevant statutory and Constitutional provisions to Texas's third-party voter registration laws. *Voting for Am.*, slip op. at 4. Defendant Andrade offers no argument why the Court's legal analysis was incorrect, or why she has otherwise satisfied the first factor for a stay pending appeal.

Although that is reason enough to deny Defendant Andrade's Motion, she has also failed to demonstrate irreparable harm absent a stay. Instead, Defendant Andrade recites the same catalogue of unproven and incredible consequences that the Court rejected in its Opinion and Order, now adding the colorful image of a VDR riding from county to county sowing disenfranchisement, then slipping from the state ahead of the authorities. There is no basis in the record for a finding of irreparable harm to Defendant Andrade. Indeed, by failing to present even a single witness or document at the evidentiary hearing, Defendant Andrade has failed to make any factual showing beyond bare speculation. *See Id.* at 87-88 (“Defendants, by contrast,

presented no evidence that would allow this Court to find that an injunction would do substantial harm to their interests or the interests of the people of Texas.”).

Defendant Andrade’s argument for irreparable injury appears to depend from the assertion that the Court’s order is so confusing that it has caused havoc among Texas’s county registrars.¹ This asserted confusion centers largely on the Training Requirement, a provision that the Court did not enjoin. In support, Defendant Andrade cites an affidavit of Brian Keith Ingram, Director of the Elections Division of the Texas Secretary of State’s office. Although Ingram was present during the evidentiary hearing, Defendant Andrade did not call him as a witness, depriving the Organizational Plaintiffs of the opportunity to cross-examine him. *See* Prelim. Inj. Hr’g Tr., 2, June 11, 2012.

Ingram was cross-examined, however, in another pending election case, where he conceded that prior to his appointment as Director of Elections earlier *this* year, he had “virtually no experience in election law.” Ex. A, Transcript of Record at 76-77, *Texas v. Holder*, No. 12-128 (D.D.C. July 9, 2012); *see also* Ex. B, Ingram Dep. at 53-68, *Texas v. Holder*, No. 12-128 (D.D.C. June 5, 2012) (discussing his legal experience prior to appointment as Director of the Elections Division). Strikingly, Ingram’s position that it is impossible to provide timely guidance on the Court’s preliminary injunction is in direct contrast to his statement in *Texas v. Holder* that the Secretary of State’s office could comply with a Voter ID order if it were decided by August 15 or even August 31 of this year. Ex. B, Ingram Dep. at 251-252. Moreover, Mr. Ingram testified to the three-judge court considering the Voter ID law that the statewide training program regularly conducted by the Secretary of State's office in advance of the election would

¹ Any confusion, if it exists, predates the Court’s order: evidence adduced at the preliminary injunction hearing demonstrated “inconsistent or lax enforcement of the VDR appointment scheme” among the county registrars. *Voting for Am.*, slip op. at 89 n.30.

not be held until August 20 therefore giving the Secretary of State ample time to inform the election apparatus of election law changes. *See* Ex. C, Status Conference Tr. at 8-9, 25-26, *Texas v. Holder*, No. 12-128 (D.D.C. May 3, 2012) (Mr. Ingram testifies between 700 and 900 election workers from around the state will attend the training).²

Defendant Andrade wholly fails to articulate what difficulty arises from allowing voting organizations to use performance-based metrics, photocopy completed voter registration applications, submit the applications by mail, or operate in multiple counties. To the extent that out-of-state canvassers cause an increased administrative burden on counties to accept and process VDR applications, the burden is slight. Moreover, two of the provisions—the Compensation Prohibition and the In-State Restriction—are recent enactments. Similarly, others are only recent policy interpretations. *See Voting for Am.*, slip op. at 13-14 (citing Pls.’ Ex. 1, Letter from Ann McGeehan to Niyati Shah at 4 (May 13, 2011)) (explaining that the Secretary’s 2011 letter clarified how stringently the state interprets the VDR regulations). Therefore the “Secretary does not have to hypothesize about a world in which these prohibitions do not exist.” *Voting for Am.*, slip op. at 88.

² The problem with attempting to support a Motion to Stay with out-of-court hearsay affidavits is that it deprives Plaintiffs of any opportunity to cross-examine the witness on his unsubstantiated averments. If there was competent evidence of the sort offered by Ingram in his affidavit, it should have been presented at the hearing. Plaintiffs object to Ingram's affidavit and move to strike it. Further, facts stated in an affidavit, if the Court were to accept it post-hearing, must affirmatively show that that affiant or declarant is competent to testify on the matters in the affidavit. *See* Fed. R. of Civ. Pro. 56(c)(4). The testimony must be grounded in observation or other personal experience and must not be based on speculation, intuition, or rumors. *See Visser v. Packer Eng’g Assocs.*, 924 F.2d 655, 659 (7th Cir. 1991). Conclusory allegations, speculation, unsubstantiated assertions and legalistic argumentation are no substitute for specific facts. *See TIG Ins. Co. v. Sedgwick James*, 276 F.3d 754, 759 (5th Cir. 2002). Ingram’s affidavit fails to make such a showing, presenting only speculation that demonstrates Defendants are not interested in a good-faith effort to educate volunteer deputy registrars on the current applicable law, but instead are willing to go to great lengths to keep in place a restrictive, burdensome voter registration scheme.

Even if the Court were to believe, without in-court competent evidence, that the inconvenience of clarifying the law to county officials is an actual problem, any injury to Defendant Andrade is clearly outweighed by the damage to established constitutional and statutory interests that will occur if a stay is granted. *See Id.* at 85 (“[W]hen a plaintiff loses an opportunity to register a voter, the opportunity is gone forever.”) (quoting *League of Women Voters of Fla. v. Browning*, 2012 WL 1957793, at *11 (N.D. Fla. May 31, 2012)). Should the stay be granted, the Organizational Plaintiffs will be denied the opportunity to exercise the freedoms guaranteed by the First Amendment of the Constitution in advance of a federal presidential election, a harm that is “unquestionably” an irreparable injury. *Id.* at 86. The fear of criminal prosecution will prevent citizens from speaking. *Id.* at 60 (An “outright ban” on speech “backed by criminal sanctions” has “the inevitable effect of reducing the total quantum of speech.”) (quoting *Citizens United v. FEC*, 130 S. Ct. 876, 897 (2010)). The vindication of such rights serves “the public interest almost by definition.” *Id.* at 90 (quoting *League of Women Voters of Fla.*, 2012 WL 1957793, at *11).

The Court has already ruled on the likelihood of success on the merits and weighed the equities in this case. Because Defendant Andrade makes no attempt to establish that she meets the standard for a stay pending appeal under Fed. R. App. P. 8, because she offered no evidence in support of her position during the evidentiary hearing and because she could not meet the standard under even a charitable reading of her motion, the Court should deny the Motion for Stay.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the seventh day of August, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all counsel of record.

/s/ Chad W. Dunn

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9 Proceedings recorded by machine shorthand, transcript produced
10 by computer-aided transcription.

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE DEPUTY CLERK: Civil action 12-128, State of
3 Texas versus Eric H. Holder, Jr.

4 For the plaintiffs, Jonathan Mitchell, Patrick Sweeten,
5 Matthew Frederick, Reynolds Briffenden, Stacey Napier, Adam
6 Mortara, John McKenzie, Asha Spencer and John Hughes.

7 For the defense, Meredith Bell-Platts, Jennifer
8 Maranzano, Elizabeth Westfall.

9 For the intervenor defendants Chad Dunn, Gerald Hebert,
10 Ezra Rosenberg, Nancy Abudu, Adam Harris and Brian Sells.

11 JUDGE COLLYER: Good morning everyone. I'm Judge
12 Collyer and to my left is Judge Tatel of the Circuit Court and
13 to my right is Judge Wilkins of the District Court.

14 We're here today for trial in Texas versus Holder and
15 Texas bears the burden so it will go first.

16 I am going to be timing things. Texas has, what is it
17 ten hours, the United States has ten hours, and the intervenors
18 have five hours. The direct examination counts against a
19 party, the cross examination counts against the party doing the
20 cross.

21 As I understand it, Mr. Mortara, welcome back to you and
22 your colleague and colleagues. I understand that you wanted to
23 make an opening statement and you understand that will come
24 from your time?

25 MR. MORTARA: Yes, Your Honor.

1 Yeah.

2 All right, we're going to take a 15 minute break. And
3 we'll be back at 15 minutes from now.

4 Thank you, sir.

5 (Witness excused.)

6 (Recess at 10:35 a.m.)

7 (Proceedings resumed at 10:55 a.m.)

8 JUDGE COLLYER: I have to say that many of the
9 counsel here were in the Texas redistricting trial, and it's
10 like see old friends.

11 I've been thinking a lot about you, I promise. As
12 have -- as have other people. I promise.

13 All right. Ms. Westfield -- Westfall, sorry.

14 MS. WESTFALL: Thank you, Your Honor.

15 **CROSS EXAMINATION**

16 BY MS. WESTFALL:

17 Q. Good morning, Mr. Ingram.

18 A. Good morning.

19 Q. You currently serve as the Director of the Elections
20 Division for the State of Texas; is that correct?

21 A. That is, yes, ma'am.

22 Q. And you started serving in that position on January 5th,
23 2012; is that correct?

24 A. I did.

25 Q. Prior to becoming Director of the Elections Division, you

1 had virtually no experience in election law; is that right?

2 A. That's true, yes.

3 Q. You've never been in a polling location to observe an
4 election; is that correct?

5 A. That is correct.

6 Q. Mr. Ingram, you were involved in the development of SB 14;
7 is that correct?

8 A. That is true.

9 Q. You gave no input on Senate Bill 14; is that right?

10 A. I did not.

11 Q. You did not craft the language of SB 14; is that correct?

12 A. No, ma'am.

13 Q. You didn't vote on Senate Bill 14; is that correct?

14 A. I did not.

15 Q. You had no role whatsoever in the passage of Senate Bill
16 14; is that right?

17 A. I didn't.

18 Q. And you had no communications with anyone about Senate
19 Bill 14 while the legislature was considering SB 14; is that
20 correct?

21 A. That's true.

22 Q. In fact, you were not involved in any previous voter ID
23 bills considered by the Texas legislature; is that correct?

24 A. That is correct.

25 Q. And today you've never worked with the legislature in

1 MR. DUNN: Good morning. My name is Chad Dunn, and I
2 represent the Defendant-Intervenors.

3 JUDGE COLLYER: Thank you, sir.

4 **CROSS EXAMINATION**

5 BY MR. DUNN:

6 Q. Mr. Ingram, good to see you again.

7 A. Good to see you.

8 Q. As I understand your testimony, you work for the Secretary
9 of State's Office in the administration of elections; is that
10 true?

11 A. That is true.

12 Q. And the job, of course, of that office is to call the
13 balls and strikes of the election, you're sort of the empire;
14 is that a fact?

15 A. That's true.

16 Q. And when you administer these election laws, you want to
17 do so not just for partisan reasons or not just for the public
18 perception reason, but also to make sure the laws are fair to
19 individual races, whether it's Anglos, Latinos, et cetera; is
20 that a fact?

21 A. I agree with that.

22 Q. Yeah. It's true, though, that it is your opinion, your
23 personal opinion that the Senate Bill 14 is a good piece of
24 legislation; is that a fact?

25 A. That is true, my personal opinion is that it was a good

1 law.

2 Q. And it's one that you think ought to be implemented; is
3 that true?

4 A. Well, I think it -- I think that both personally as well
5 as officially. You know, the Secretary of State's job is to
6 implement laws passed by the legislature, and so it is my job
7 to see that this law is implemented.

8 Q. Now, your predecessor, Ms. McGeehan, that had been in your
9 office for more than a decade was unwilling to quite go that
10 far in her testimony before the legislature; is that true?

11 A. I don't know.

12 Q. In fact, she said it wasn't her position to take a
13 position on the law; is that a fact?

14 A. That's true, and before law is passed, it is not our
15 position to take a position on a bill.

16 Q. She also didn't take a position, as you have, in her
17 deposition in this case?

18 A. I don't know, I haven't read her depo.

19 Q. Now, I'd like to move on to the NVRA. And I'm sure it was
20 just a slip of the tongue, but His Honor asked you what NVRA
21 stood for, you said the National Voting Rights Act, it's
22 actually the National Voter Registration Act?

23 A. That's right, I always get those two mixed up. I have
24 dyslexia.

25 Q. I understand. And the state has recently been sued, has

1 it not, for violation of the National Voter Registration Act?

2 A. It has.

3 Q. In fact, there's a case pending in Galveston where Judge
4 Costa is awaiting a ruling on with respect to several
5 allegations of violation of the National Voter Registration
6 Act?

7 A. We've got several alleged violations, there hasn't been a
8 finding by the court yet. I've expected a decision by now.
9 How about you?

10 Q. I have been expecting it. There's other decisions I
11 expect, too, but they don't always come when I expect them.

12 Now, some of the complaints made under the NVRA include out
13 of county. For example, it's now under new legislation passed
14 by this state legislature, the Texas legislature, it's now
15 unlawful for somebody to accept a voter registration
16 application from somebody who lives in an adjoining county; is
17 that true?

18 A. That is not true.

19 Q. In other words, if somebody runs a voter registration
20 drive in downtown Houston and happens to receive a voter
21 registration application from a resident of Montgomery County,
22 it's your testimony that's lawful under Texas law today?

23 A. Of course, it is. If they are registered in that
24 adjoining county as a volunteer deputy registrar, you bet.

25 Q. Okay. But if the deputy registrar is only registered in

1 Harris County where they're running the drive, they've
2 committed a law violation by accepting that application; is
3 that true?

4 A. Probably.

5 Q. Another recent restriction in voter registration in Texas
6 includes the requirement that a voter registration person,
7 somebody who accepts a voter registration can only accept one
8 that's complete; is that true?

9 A. That is not true. There is an obligation to check it for
10 completeness and ask the voter to finish it, but they can
11 receive them if they're not complete, you bet.

12 Q. In fact, it's a crime if a deputy voter registrar turns in
13 an incomplete voter registration application?

14 A. That is not true.

15 Q. On collecting applications, it is now state law in Texas
16 that a deputy registrar, a person who accepts an application
17 must be deputized; is that true?

18 A. That's true, but that's been the law for thirty years.

19 Q. And, in fact, an individual who went about and collected
20 voter registration applications in their high school class, for
21 example, and turned them in, if they had not been deputized,
22 would have violated the state law?

23 A. That's right, for the last thirty years or so.

24 Q. Now, there's also a number of restrictions that have been
25 recently implemented on processing voter registration

1 applications; isn't that true?

2 A. I don't know what you mean.

3 Q. For example, there are some counties in Texas, and to use
4 Mr. Mortara's example, if José De la Cruz fills out his voter
5 registration application, and the Harris County voter
6 registration clerk inputs it into the TEAM system without
7 spaces, and it's not matched, although it's in the TEAM system
8 with spaces, that person gets rejected in some counties; isn't
9 that a fact? Or do you not know?

10 A. I don't know one way or the other on that.

11 Q. In Harris County, for example, in 2008, they had rejected
12 sixty-eight thousand voter registration applications in the
13 lead up to the historic 2008 presidential election; is that
14 true?

15 A. I don't know.

16 Q. In fact, after that case, there had been a lawsuit against
17 Harris County, and there was a consent order entered that
18 prohibited many of Harris County's practices as they relate to
19 voter registration; is that a fact?

20 A. I don't know about your characterization of it. I know
21 there was a lawsuit.

22 Q. And you know there was a settlement that was entered by
23 the federal court?

24 A. I don't know the resolution of that lawsuit.

25 Q. The point is, Mr. Mortara makes the case here that there's

1 this ease of registration. Do you remember him using that
2 phrase?

3 A. That's true.

4 Q. But, in fact, Texas in many of its counties on an ad hoc
5 basis have erected barriers to voter registration in Texas?

6 A. That is not true.

7 Q. Now, there was also some testimony I heard from you with
8 respect to the challenging of a voter on the roll and that it's
9 difficult under HAVA for county officials to remove voters from
10 the roll. Did I hear that right?

11 A. No, I believe that I was talking about the NVRA at that
12 point, but federal law makes it more difficult to remove voters
13 who have moved from the county.

14 Q. But in speaking of laws that you said have been around for
15 30 or so years, there is in Chapter 16 of the Election Code a
16 challenge procedure where any voter who's on the rolls
17 unlawfully can be challenged and removed; is that true?

18 A. Sure.

19 Q. In fact, any registered voter in Texas can challenge the
20 registration of any other registered voter; is that a fact?

21 A. That's true, and that's one of the things the sheriff in
22 Loving County and I talked about.

23 Q. And, in fact, some counties, including Harris County, and
24 now Loving County, are instituting their own challenges of
25 voters who are on the rolls?

1 A. I don't know anything about that.

2 Q. But to the extent that there are people on the voter roles
3 who shouldn't be there, there are tools in place for the state
4 and the county officials to do something about that; isn't that
5 true?

6 A. Within the constraints of federal law, you bet.

7 Q. And, but now I assume that your testimony in support of
8 Senate Bill 14 would be despite any negligence or malfeasance
9 by counties of the state and administration of the voter roll,
10 an additional barrier to voting ought to be erected to the
11 voters to undertake.

12 A. I don't know if I agree with that or not.

13 Q. Since we're talking about recent voting issues, you're
14 aware of a complaint that was made in Atascosa County to your
15 office on a May 12th city election where a Latino citizen was
16 denied the right to vote because they wouldn't produce a photo
17 ID; are you not?

18 A. I'm not aware of that complaint.

19 Q. You're not aware that a written complaint has been filed
20 with your office where a Latino citizen was prevented from
21 voting because they couldn't present a photo ID?

22 A. I am not aware of that complaint. I'm not saying that we
23 don't have it, I just haven't seen it yet. It hasn't --

24 Q. Is it the case -- I beg your pardon, sir. Were you
25 finished?

1 A. I was not.

2 Q. All right. Go ahead.

3 A. It hasn't come to my desk yet.

4 Q. Okay. Is it the case in your office that only the cases
5 that might support Senate Bill 14 make it to your desk, but the
6 other complaints do not?

7 A. That is most certainly not true.

8 Q. Now, you also mentioned that you being registered in
9 Williamson County and Travis County have the ability to vote in
10 both counties; is that true?

11 A. I could if I wanted to break the law.

12 Q. And I assume it's your position under Senate Bill 14 that
13 since you would have to present a driver's license under that
14 law, one of the counties would prevent you from doing so?

15 A. Probably.

16 Q. In other words, you live in Williamson County. If you
17 went to Travis County and your address showed your Williamson
18 County home, if the system is working correctly, you're going
19 to get rejected; is that true?

20 A. I'd probably be allowed to vote provisionally, but yeah.

21 Q. Similarly if you moved to Williamson County and changed
22 your registration, but had not yet had your address on your
23 driver's license changed, Williamson County, your home county
24 where you're supposed to vote, could similarly reject you; is
25 that a fact?

1 A. They could offer a provisional ballot, and you could go
2 explain the discrepancy within the next six days.

3 Q. You also mentioned the Donna Howard race. Donna Howard
4 was a state representative, she ran against the republican
5 nominee and won by a handful of votes; is that true?

6 A. That's right.

7 Q. And there was an election contest adjudicated by the
8 legislature in that case?

9 A. There was.

10 Q. And there was multiple allegations made by republican
11 nominee of rampant in-person voting; was there not?

12 A. There was rampant in-person voting in that election,
13 that's how those people vote, yes.

14 Q. There was allegations of rampant in-person voting fraud in
15 favor of the democratic nominee in that case?

16 A. I believe so, yes. I don't know about rampant, but there
17 were allegations of voter fraud, you bet.

18 Q. And despite adjudication by this very same legislature, no
19 such case was proven and Donna Howard was installed as the
20 state representative; is that true?

21 A. I don't know if they found no such case, but they did
22 install Donna Howard. There was not enough found to overturn
23 the race.

24 JUDGE COLLYER: When was that?

25 MR. DUNN: I believe it was 2008.

1 THE WITNESS: No, I think it was the 2010 election,
2 and the legislative session in 2011 is the one that held the
3 hearing.

4 MR. DUNN: That's right.

5 JUDGE COLLYER: And what did you do before January of
6 2012?

7 THE WITNESS: I worked for the governor in the
8 Appointments Office, appointments manager.

9 JUDGE COLLYER: So you didn't have anything to do
10 with elections?

11 THE WITNESS: No, the specific positions that I
12 appointed were judicial positions, and so I had to interface
13 with the Election Code with regard to the elections of judges.

14 JUDGE COLLYER: Thank you, sir.

15 MR. DUNN: Just a couple more questions.

16 BY MR. DUNN:

17 Q. On to this issue of whether or not a name is substantially
18 similar and discretion given to local voter registrars, are you
19 aware of some of the nicknames or other names used for the
20 first name Jesus?

21 A. Jesse.

22 Q. Any others?

23 A. I don't know of any others.

24 Q. Would it surprise you that Shuage and Shucko [phonetic]
25 are also names?

1 A. No, those fit.

2 Q. Do you an expect that individual voter registrars in 254
3 counties are going to know these other names?

4 A. I don't know what they know. I would assume if they live
5 in a county with a fairly high Hispanic population that they
6 know it.

7 Q. And finally, in the recent legislative activity there have
8 been different regulations erected for voter registration,
9 there's been regulations adopted to stop organized registration
10 drives. There's been redistricting plans that at least one
11 court has enjoined, and now this photo ID law.

12 Would you agree that has been the lion share of the
13 election efforts by the Texas legislature?

14 A. I don't know about the characterization. It is what it
15 is.

16 Q. You are aware in Texas that there are some two million
17 Latino citizen voting age population that are not registered to
18 vote; is that true?

19 A. I know that that's what you said in Galveston, I haven't
20 independently verified it.

21 Q. You haven't looked at the census figures on your own to
22 determine that?

23 A. I have not.

24 Q. So you also don't know that there's three quarters of a
25 million African-American citizen voting ages not registered?

1 A. Right, we don't track voter registration by race, so I
2 have no idea.

3 Q. But the legislature spent considerable time concerned
4 about voter fraud, but really has passed nothing to further the
5 registration of these -- of these minority citizens; isn't that
6 a fact?

7 A. I don't know. The voter registration process is easy. So
8 I don't know what would facilitate that registration.

9 MR. DUNN: Thank you, Your Honors.

10 JUDGE COLLYER: All right. Is there any redirect?

11 MR. MORTARA: No, Your Honor.

12 THE COURT: All right, thank you very much. Sir,
13 you're excused.

14 THE WITNESS: Thank you, Your Honor.

15 (Witness excused.)

16 MR. McKENZIE: Good morning, Your Honors.

17 JUDGE COLLYER: Good morning.

18 MR. McKENZIE: John McKenzie for the State of Texas.

19 JUDGE COLLYER: Thank you, sir. Go right ahead, are
20 you going to call your next witness?

21 MR. McKENZIE: We'd like to call Representative José
22 Aliseda.

23 **JOSÉ LUIS ALISEDA, JR., PLAINTIFF WITNESS, SWORN**

24 THE DEPUTY CLERK: You may be seated.

25 MR. McKENZIE: May I begin?

BRIAN INGRAM

June 5, 2012

<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA</p> <p>STATE OF TEXAS,) Plaintiff,) VS.) ERIC H. HOLDER, JR. in his) official capacity as Attorney) General of the United States,) Defendant,) ERIC KENNIE, et al,) Defendant-Intervenors,) TEXAS STATE CONFERENCE OF) CASE NO. 1:12-CV-00128 NAACP BRANCHES,) (RMC-DST-RLW) Defendant-Intervenors,) Three-Judge Court TEXAS LEAGUE OF YOUNG VOTERS) EDUCATION FUND, et al,) Defendant-Intervenors,) TEXAS LEGISLATIVE BLACK) CAUCUS, et al,) Defendant-Intervenors,) VICTORIA RODRIGUEZ, et al.,) Defendant-Intervenors.)</p> <p style="text-align: center;">***** ORAL DEPOSITION OF BRIAN KEITH INGRAM JUNE 5, 2012 *****</p>	<p style="text-align: center;">A P P E A R A N C E S</p> <p>FOR THE PLAINTIFF, STATE OF TEXAS: Patrick K. Sweeten John McKenzie Jay Dyer OFFICE OF THE ATTORNEY GENERAL OF TEXAS P.O. Box 12548 Austin, TX 78711-2548</p> <p>209 West 14th Street 8th Floor Austin, TX 78701 (512) 936-1307 patrick.sweeten@texasattorneygeneral.gov</p> <p>FOR THE DEFENDANT, HOLDER, ET AL: Bruce Gear Jennifer Maranzano U.S. DEPARTMENT OF JUSTICE 950 Pennsylvania Avenue, NW NWB - Room 7202 Washington, DC 20530 (202) 305-7766 bruce.gear@usdoj.gov jennifer.maranzano@usdoj.gov</p> <p>FOR THE DEFENDANT-INTERVENOR TEXAS STATE CONFERENCE OF NAACP BRANCHES AND THE MEXICAN AMERICAN LEGISLATIVE CAUCUS: Ian Vandewalker (by telephone) Myrna Perez (by telephone) THE BRENNAN CENTER FOR JUSTICE AT NYU LAW SCHOOL 161 Avenue of the Americas, Floor 12 New York, NY 10013-1205 (646) 292-8362 ian.vandewalker@nyu.edu myrna.perez@nyu.edu</p>																										
<p>ORAL DEPOSITION OF BRIAN KEITH INGRAM, produced as a witness at the instance of the Defendant, was duly sworn, was taken in the above-styled and numbered cause on the JUNE 5, 2012, from 9:36 a.m. to 5:25 p.m., before Chris Carpenter, CSR, in and for the State of Texas, reported by machine shorthand, at the offices of The United States Attorney's Office, 816 Congress Avenue, Suite 1000, Austin, Texas 78701, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.</p>	<p style="text-align: center;">INDEX</p> <p>Appearances.....3 BRIAN KEITH INGRAM Examination by Mr. Gear.....5 Examination by Mr. Vandewalker.....231 Further Examination by Mr. Gear.....263 Further Examination by Mr. Vandewalker..266 Examination by Mr. Sweeten.....274 Signature and Changes.....276 Reporter's Certificate.....278</p> <p style="text-align: center;">EXHIBITS</p> <table border="0"> <thead> <tr> <th style="text-align: left;">NO. DESCRIPTION</th> <th style="text-align: right;">PAGE MARKED</th> </tr> </thead> <tbody> <tr> <td>5 SB No. 14</td> <td style="text-align: right;">126</td> </tr> <tr> <td>28 HB No. 218</td> <td style="text-align: right;">111</td> </tr> <tr> <td>44 HB No. 1706</td> <td style="text-align: right;">163</td> </tr> <tr> <td>101 Texas Legislature Online History, HB 1706</td> <td style="text-align: right;">107</td> </tr> <tr> <td>552 Notice of Deposition</td> <td style="text-align: right;">36</td> </tr> <tr> <td>553 E-Mail, June 5, 2012</td> <td style="text-align: right;">28</td> </tr> <tr> <td>554 E-Mails and Attachments, TX_00148056 thru TX_00148170</td> <td style="text-align: right;">94</td> </tr> <tr> <td>555 Group of Documents Pertaining to Angelina County Investigation</td> <td style="text-align: right;">96</td> </tr> <tr> <td>556 SB No. 362</td> <td style="text-align: right;">162</td> </tr> <tr> <td>557 Election Irregularities Reported During the May 9, 2009 General Election</td> <td style="text-align: right;">215</td> </tr> <tr> <td>558 Affidavit of Keith Ingram</td> <td style="text-align: right;">240</td> </tr> <tr> <td>559 Plaintiff's Supplemental Objections and Responses to Defendant's First Set of Interrogatories</td> <td style="text-align: right;">263</td> </tr> </tbody> </table>	NO. DESCRIPTION	PAGE MARKED	5 SB No. 14	126	28 HB No. 218	111	44 HB No. 1706	163	101 Texas Legislature Online History, HB 1706	107	552 Notice of Deposition	36	553 E-Mail, June 5, 2012	28	554 E-Mails and Attachments, TX_00148056 thru TX_00148170	94	555 Group of Documents Pertaining to Angelina County Investigation	96	556 SB No. 362	162	557 Election Irregularities Reported During the May 9, 2009 General Election	215	558 Affidavit of Keith Ingram	240	559 Plaintiff's Supplemental Objections and Responses to Defendant's First Set of Interrogatories	263
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1 A. I don't know.

2 Q. Who would know what's maintained within the

3 electronic file pertaining to SB 14?

4 A. I don't know.

5 Q. Is there a particular person that's responsible

6 for maintaining that file?

7 A. Well, yes. There's a lady in my office who's

8 got a -- you know, a list of stuff.

9 Q. Okay. And so let's flesh that out a little

10 bit. There's a lady in your office. Who is the lady?

11 A. Jennifer Templeton.

12 Q. And what are -- what are Jennifer Templeton's

13 responsibilities?

14 A. Well, applicable to this, it's her

15 responsibility to gather information and keep public

16 information requests in order and on track.

17 Q. And you testified to stuff, and I'm just trying

18 to put that into context.

19 A. Well, I haven't -- I haven't looked at her

20 list, so I don't know how detailed the description is

21 of, of the items. It's -- she got a list of everything

22 that we've turned over to the OAG in connection with

23 this litigation. But what I think is that's it's a real

24 high-level list.

25 Q. And when you say high level, what do you mean?

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1 A. I mean, you know, three banker boxes of

2 documents.

3 Q. Okay.

4 A. So, I don't think it's of much help is my

5 point.

6 Q. Has the list itself been turned over to the

7 OAG?

8 A. No.

9 Q. But that list would identify everything that

10 has been turned over and everything that's within the

11 electronic file pertaining to SB 14?

12 A. In a very general way.

13 Q. Did you review Ann McGeehan's files pertaining

14 to SB 14?

15 A. I don't know.

16 Q. Would Ann McGeehan's files, notes, speeches,

17 whatever exists be contained within the electronic file

18 that you've been testifying here today?

19 A. Yeah. It would be in the electronic and paper

20 files. We gathered everything.

21 Q. And so did you review Ann McGeehan's files

22 pertaining to SB 14 when you began in January of 2012?

23 MR. SWEETEN: Objection, asked and

24 answered.

25 A. Yeah.

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1 Q. (By Mr. Gear) I don't believe I asked that one,

2 but you can answer.

3 A. I don't know. I mean, it's a hard question to

4 answer, because Ann McGeehan didn't have files. You

5 know, that's -- that's not a category that exists.

6 There are files that contain Ann McGeehan's work in

7 them, and I have looked at some of those, sure.

8 Q. Okay.

9 A. It is in response to the Suzanne Gamboa PIR, we

10 were trying to go through them and assert objections.

11 Q. So you said, if I understand your testimony

12 correctly, she did not have a file that exists on a

13 electronic drive, but she had -- she had work that

14 existed on the electronic drive, correct?

15 A. That's the best of my ability to describe it,

16 yes.

17 Q. And are you familiar with the work that she

18 produced pertaining to SB 14?

19 A. Am I familiar with all of it? I don't know.

20 Q. But you've reviewed --

21 A. Some.

22 Q. -- some of that work?

23 A. (Witness nods head yes.)

24 Q. In addition to the electronic files, are there

25 paper files maintained within your office pertaining to

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1 SB 14 or voter ID legislation generally?

2 A. Yes.

3 Q. And were those searched in response to the

4 notice of deposition?

5 A. No.

6 Q. Do you know -- do you know or do you have

7 knowledge as to whether the paper files contained any

8 different documentation other than the -- beyond the

9 electronic file?

10 A. I have no idea.

11 Q. I'm going to change the focus for a second to

12 your educational background. Can you tell me a little

13 bit about your educational background?

14 A. I graduated Permian Basin Christian School with

15 a high school diploma in 1985. I graduated Texas A&M

16 University with a BA in political science in 1989.

17 Graduated UT Law with a JD in 1993.

18 Q. All right. And I just need to slow down a

19 little bit. So we can skip past high school. You

20 graduated. Congratulations. Let's go to 1999.

21 A. But in high school, I was the top 20 percent of

22 my class. You don't want to just pass right over that.

23 Q. And that is important.

24 A. I wasn't in the top 20 present. I was the top

25 20 present. It was a small school.



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1 Q. So in 1999, you said you graduated from
 2 undergrad, correct?
 3 A. 1989.
 4 Q. 1989 you graduated from undergrad. And did I
 5 -- did I hear University of Texas?
 6 A. That's law school.
 7 Q. Law school. So the undergrad was --
 8 A. Texas A&M.
 9 Q. Texas A&M. Okay. And then UT law school was
 10 in?
 11 A. 1993.
 12 Q. '93. And do you have an active law license?
 13 A. I do.
 14 Q. And which states do you have an active law
 15 license in?
 16 A. Texas and Arkansas.
 17 Q. Okay. Well, let's just talk about your work
 18 history, if we -- if we can. Did you come to practice
 19 law at any particular time?
 20 A. I did.
 21 Q. And tell me just a little bit about your law
 22 practice.
 23 A. Sure. September of '93 to February of '96, I
 24 was at a firm in McAllen, Texas named Atlas and Hall,
 25 LLP. And I was a litigation associate, but did a little

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1 bit of a lot of stuff.
 2 Q. Okay. Beyond 1996?
 3 A. In February 1996, I came to Austin to work in a
 4 litigation boutique. At the time, it was Maroney,
 5 Crowley, Bankston, Richardson & Hull, LLP, where I was
 6 also a litigation associate. But instead of doing as
 7 many different things as I was doing in McAllen, now I
 8 had focused primarily on product liability litigation,
 9 breast implants, medical malpractice and general
 10 insurance defense, mainly of Sears and Jefferson
 11 Insurance.
 12 Q. And you did that from '96 to --
 13 A. The guys that I came to work for in '96, we
 14 stayed together until 2006. It was different firms. We
 15 merged with Locke, Purnell, Rain & Harrell. Locke,
 16 Purnell merged with Liddell, Sapp, Zivley, Hill &
 17 LaBoon. And then it merged with Liddell, Sapp, Zivley,
 18 Hill & LaBoon, and then we left again to form our own
 19 litigation boutique.
 20 Q. And you left again in 2006 or you left --
 21 A. No. We left in April of 2000, and then had our
 22 own firm until March of 2006, when I went to Arkansas.
 23 Q. So between 1996 to 2006, you were a lawyer with
 24 Maroney or some capacity of Maroney. Is that fair to
 25 say?

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1 A. That's fair.
 2 Q. Okay. And so in 2006, you indicated you left
 3 and went to Arkansas?
 4 A. I did.
 5 Q. And where did you go when you went to Arkansas?
 6 A. I went to a firm called Kutak Rock in Little
 7 Rock, Arkansas. They're an Omaha-based national firm.
 8 Q. And how long did you stay there?
 9 A. About a year.
 10 Q. 2006 to 2007?
 11 A. Yes.
 12 Q. And after that?
 13 A. I had my own firm for a year, January of '07 to
 14 January of '08; figured self-employed in Austin was
 15 better than Kutak Rock in Little Rock.
 16 Q. Was that -- was that in Arkansas as well, or
 17 was that back here?
 18 A. No, it was here in Austin.
 19 Q. Austin. And after 2008?
 20 A. January of 2008, I went to work for the
 21 Governor of Texas.
 22 Q. And how long did you work for the Governor?
 23 A. Four years.
 24 Q. So that would have been what, 2008 to 2012?
 25 A. '12, yes.

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1 Q. All right. So let's just go back briefly to
 2 1993 to 1996, where you worked for -- I believe you said
 3 Atlas and Hall?
 4 A. Yes.
 5 Q. And during that time period, did you do
 6 anything related to election law?
 7 A. No.
 8 Q. And then the next period would have been 1996
 9 to 2006. You want make a correction?
 10 A. Yeah. I'm not sure is a better answer to that
 11 question. I did do some work for a lawyer named Travis
 12 Hiester, and he had a whole lot of school districts that
 13 he did work for, so it is completely possible that I did
 14 some election law question for him on a memo. But I
 15 don't remember anything specifically about it.
 16 And when I was in law school, my first
 17 summer, I clerked at Bickerstaff, Heath, Smiley, and
 18 there was a huge election law case involving Applewhite
 19 Dam, a San Antonio voter initiative. It was a big
 20 constitutional mess.
 21 Q. So let's go back to your internship briefly.
 22 Bickerstaff, Heath & Riley I believe you said?
 23 A. Smiley.
 24 Q. Smiley. Smiley. And you -- you spoke a little
 25 bit about what the issue was that you've referred to a



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1 constitutional mess. Can you tell me a little bit more
 2 about the particular case that you were working on?
 3 A. Well, I'm not sure exactly what all the
 4 parameters were, but the question was whether or not the
 5 issue put before the voters on an initiative was
 6 constitutionally allowable for voters to decide in an
 7 initiative process.
 8 Q. And do you know what the issue was that was
 9 before voters?
 10 A. Applewhite Dam, a water project.
 11 Q. So that had nothing do with voter ID?
 12 A. No.
 13 Q. Is that correct?
 14 A. Definitely not.
 15 Q. Okay. All right. So going back from moving
 16 forward, as it was, to 1993, 1996, I believe I asked if
 17 you had any responsibilities dealing with voter ID or
 18 election law, and --
 19 A. Definitely not.
 20 Q. No. Okay. So in 1996 to 2006, when you were
 21 working in some capacity with Maroney, did you deal with
 22 election law at all during that time period?
 23 A. I don't think so. Not that I recall.
 24 Q. And in 2006 to 2007, when you were at Kutak
 25 Rock, I believe, did you deal with anything related to

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1 election law or voter ID legislation?
 2 A. Did not.
 3 Q. And that was in Arkansas, if I recall
 4 correctly.
 5 A. It was.
 6 Q. Okay. So then in 2007 to 2008, you came back
 7 to your own firm in Austin. Did you deal with anything
 8 related to election law or voter ID?
 9 A. Did not.
 10 Q. No. All right. And now we're to 2008 to 2012
 11 where you worked for the Governor, correct?
 12 A. Right.
 13 Q. And that would have been Governor Rick Perry at
 14 the time?
 15 A. Yes.
 16 Q. And when you came in to Governor Perry's
 17 Office, what was your title or what was your title?
 18 A. Appointments Manager.
 19 Q. And did you continue to hold that title as
 20 Appointments Manager through -- through the time that
 21 you worked for the Governor?
 22 A. I did.
 23 Q. Okay. And what were your responsibilities as
 24 an Appointments Manager?
 25 A. To assist the Governor in making gubernatorial

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1 appointments.
 2 Q. Did you have any other responsibilities?
 3 A. Yes. You know, a variety of other things.
 4 Q. Tell me what those are.
 5 A. Well, since I was a lawyer and I was in the
 6 Appointments Office, I did legal work for the division
 7 with the -- you know, in consultation of the general
 8 counsel's office. But I was the lawyer on the side of
 9 the division.
 10 Q. Okay. And I want to make sure I understand
 11 that testimony. You did legal work for the division.
 12 And you're talking about within Governor Perry's Office?
 13 A. Right, within the Appointments Division inside
 14 of Governor Perry's Office.
 15 Q. Okay. And what did that legal work involve?
 16 A. Mainly statutory interpretation.
 17 Q. Of which provisions or what provisions?
 18 A. Well, anything that comes up in Appointments,
 19 from water law, river authorities to election code.
 20 Q. Okay. And would your work have involved
 21 anything dealing with voter ID legislation?
 22 A. No. I was on a team that did bill analysis for
 23 the Governor, you know, with his Policy Office. And so
 24 one of the groups that I was in, was in legal, and that
 25 would have dealt with voter ID legislation. But I don't

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1 have any specific recall of a bill coming up.
 2 Q. Okay. And just so I understand your testimony
 3 there, you were on a team that did bill analysis?
 4 A. Right.
 5 Q. Who was -- who else was on that team?
 6 A. Well, it varied, depending on which category we
 7 were in. My role on the team is that if any
 8 appointments issue comes up in a bill, to be the
 9 Appointments person to talk about whether or not, you
 10 know, a good idea, a bad idea, it needs to be tweaked or
 11 whatever. So my role as not wholistic. My role was
 12 limited.
 13 Q. And again, so I understand what you're talking
 14 about, when you talk about Appointments issues, how
 15 would Appointments issues be related to election law,
 16 for instance?
 17 A. Well, it wouldn't necessarily be related to
 18 election law, but it would be related to a whole bunch
 19 of other kinds of laws. They always -- the Legislature
 20 always thinks it's a good idea to appointment more
 21 boards and commissions.
 22 Q. Okay. Was Michael Schofield on the team that
 23 you were referencing?
 24 A. He was in some of the groups that I was in.
 25 Q. And specifically, do you have any -- any memory



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<p style="text-align: right;">61</p> <p>1 of analyzing any voter ID legislation? 2 A. I do not. 3 Q. Were you involved in any communications 4 regarding voter ID legislation while you were in the 5 Governor's Office? 6 A. No. 7 Q. Are you aware of any existing analysis or 8 reports regarding voter ID legislation that you may have 9 reviewed while you were in the Governor's Office? 10 A. No. I didn't review anything. 11 Q. So you said you didn't review anything, but you 12 said -- you also testified that you were involved in a 13 team that conducted bill analysis? 14 A. That's right. 15 Q. And my understanding is, is you may have been 16 involved in the analysis of voter ID legislation? 17 A. Right. 18 Q. But you don't recall reviewing anything related 19 to that? 20 A. Bill analysis doesn't mean that everybody in 21 the room reviews things. 22 Q. Okay. 23 A. One person reviews and reports. Everybody else 24 has questions, so I didn't -- I didn't have any of my 25 own bills.</p>	<p style="text-align: right;">63</p> <p>1 limited role in the Governor's Office working on a team 2 that may have reviewed voter ID legislation and a memo 3 that you may have prepared some time back during your 4 law practice, did you have any other responsibilities or 5 involvement in voter ID legislation prior to becoming 6 the Director of Elections? 7 A. None. 8 Q. And I guess I should ask, just to make sure I'm 9 clear: Were you involved in any groups prior to 10 becoming the Director of Elections that -- that 11 supported or promoted voter ID legislation? 12 A. No. I don't know what you mean. 13 Q. Any groups, any outside groups, groups outside 14 of the government? 15 A. Advocacy kind of groups? 16 Q. Yes. 17 A. No. 18 Q. Are you a member of any groups outside of the 19 government? Political groups? 20 A. I'm a member of my church. 21 Q. That's a group. 22 A. Yeah, that's a group. I don't know of any 23 other groups that I would be a member of. I'm a member 24 of the Texas Bar Association, the Arkansas Bar 25 Association. I'm a member of -- I'm no longer a member</p>
<p style="text-align: right;">62</p> <p>1 Q. Okay. 2 A. So I didn't review anything. 3 Q. So help me to understand what it is that you 4 would have done, what your responsibilities on the team 5 would have been. 6 MR. SWEETEN: You can answer that as a 7 general matter. 8 A. And generally speaking, my role was to provide 9 input with regard to Appointments issues that come up in 10 the bills. 11 Q. (By Mr. Gear) Were you present during any 12 communications while in the Governor's Office where 13 voter ID legislation was the subject matter? 14 A. No. 15 Q. Have you ever worked as an election judge or an 16 election worker in any elections in the state of Texas? 17 A. I have not. 18 Q. And so my understanding is, is that you are the 19 Director of Elections within the Secretary of State's 20 Office? 21 A. That's correct. 22 Q. All right. And you began that January 5th, 23 2012? 24 A. I did. 25 Q. So prior to January 5th, 2012, other than your</p>	<p style="text-align: right;">64</p> <p>1 of any other Young Lawyer group. That's by the 2 wayside. But, you know, I don't know. Nothing advocacy 3 oriented. 4 Q. Are you a member of any -- any political 5 organizations, other than the organizations that you've 6 mentioned? 7 A. No. 8 Q. Do you sit on any committees of any kind? 9 A. No. In the Governor's Office, one of the 10 things that I did was, I was his designee on the Texas 11 Access to Justice Commission, but I resigned that when I 12 came over to the Secretary of State's Office. 13 Q. Texas Access to Justice, can you tell me what 14 that is? 15 A. It is a group that was formed by the Supreme 16 Court, where the Supreme Court, in its order, invited 17 the Governor to have a designee present at the 18 meetings. And the purpose of the Texas Access to 19 Justice Commission is to make sure that indigent persons 20 in the state of Texas have access to civil legal 21 services. 22 MR. SWEETEN: Bruce, I've got an answer to 23 your question on the SOS information. 24 MR. GEAR: Okay. 25 MR. SWEETEN: We can do that at a break,</p>



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1 or I can just tell you now.
 2 MR. GEAR: We can go off the record for a
 3 second.
 4 MR. SWEETEN: All right.
 5 (Brief discussion off the record at
 6 11:01 a.m.)
 7 MR. SWEETEN: I let Bruce, at the break,
 8 know that we had produced a spreadsheet from the
 9 Secretary of State, and I gave him the Bates numbers.
 10 MR. GEAR: And I appreciate that. Thank
 11 you.
 12 My watch says 12:00 o'clock. Do you need
 13 a break at all?
 14 THE REPORTER: Yeah, I would like a break.
 15 It's 11:00 o'clock, though.
 16 MR. GEAR: Why don't we take a ten-minute
 17 break.
 18 (Recess from 11:02 a.m. to 11:13 a.m.)
 19 Q. (By Mr. Gear) So we moved through your long
 20 and illustrious history, work history, and so now we've
 21 gotten to the point where you are employed with the
 22 Secretary of State's Office. And so why don't we start
 23 off by talking about how you came to be employed by the
 24 Secretary of State?
 25 A. I had an -- obviously, the Deputy Secretary of

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1 State, Coby Shorter, used to be in the Appointments
 2 Office. He was the Deputy Secretary. He was the Deputy
 3 Director of Appointments. And whenever I came, he had
 4 just left, so I was at his desk in the Appointments
 5 Office. And over the years I got to know Coby. I would
 6 go to the senior staff meetings sometimes, and he was up
 7 there, and you know, you just get to know people.
 8 And after this last legislative session,
 9 you start the process of thinking about what comes
 10 next. You can't do appointments for the Governor
 11 forever, and you have to go back to the work at some
 12 point. So talked to my director about, you know,
 13 keeping our ear to the ground and kind of putting
 14 feelers out, you know, for anything that might be coming
 15 up.
 16 And got a weird phone call from John
 17 Sepehri. It was weird. John Sepehri, I had known for a
 18 while. He's general counsel in the Secretary of State's
 19 Office for the last few years. And so I had known him
 20 in that capacity, and we had lunch a few times. And you
 21 know, we were friends. And he calls and he says -- just
 22 asking random questions, election law experience, not
 23 much. A little bit as it pertains to judicial
 24 appointments, but not much. And "Ever worked" -- "Ever
 25 been to party conventions?" "

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1 No, never have." You know. Just
 2 strange -- "John, what's this about?"
 3 "Can't tell you right now."
 4 Okay. And so then another weird phone
 5 call about a week later, "Have you ever met the
 6 Secretary?"
 7 "No."
 8 "Why don't you come over and meet the
 9 Secretary?"
 10 "Okay. Love to."
 11 So we dropped by and met the Secretary,
 12 you know, just coming by to see John and he happened to
 13 be over there by her, and we just happened to be --
 14 anyway, it was all very strange, cloak and dagger, and I
 15 don't know what the deal was.
 16 But at some point, I had a conversation
 17 with Coby Shorter who says that Ann McGeehan was
 18 retiring, and that he had thought of me as a possibility
 19 to replace her and wanted to know if I was interested.
 20 And I said "yes." He had already talked to Teresa, my
 21 boss, so they'd already --
 22 Q. So was there a formal interviewing process?
 23 A. There was. I had a formal interview with Coby,
 24 I don't know sometime after that.
 25 Q. Okay. So had you ever attended any party

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1 conventions?
 2 A. No. No. I did the Williamson County
 3 convention for the Republicans in '08, just because I'd
 4 never had done any of that stuff before. So at precinct
 5 convention level, I became the precinct convention
 6 chairman of the three of us that were meeting, one of
 7 which was my wife. And we nominated ourselves to be
 8 delegates to the Williamson County convention, and we
 9 went. That was quite an entertaining process. You
 10 would not believe the amount of energy spent in debating
 11 whether or not the 17th Amendment should stay on the
 12 platform or not. It was interesting. So that was the
 13 only time.
 14 Q. And the 17th Amendment would --
 15 A. Direct election of senators, yeah. That was a
 16 hot issue at the Williamson County Republican
 17 convention.
 18 Q. And so as we've established already, you -- you
 19 became employed with the Secretary of State's Office on
 20 January 5th, 2012?
 21 A. Yes.
 22 Q. And did you come in as the Director of
 23 Elections?
 24 A. I did.
 25 Q. And because I don't know, can you tell me what



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BRIAN INGRAM

June 5, 2012

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1 the -- what the structure of the Secretary of State's
 2 Office is, particularly as it pertains to election laws?
 3 A. Well, we have the Secretary and the Deputy
 4 Secretary. And then under the Deputy Secretary, we've
 5 got several division directors, one of which is the
 6 Elections, so that's me. And then I've got managers,
 7 four of them that are in my division that management
 8 different teams.
 9 Q. So let's talk about the managers, and I believe
 10 you said there were four of them. Can you tell me who
 11 they are and what they manage?
 12 A. Sure. There's Louri O'Leary, who is the
 13 administration manager, so she -- all the administrative
 14 stuff in the office. She's not really an office
 15 manager. We don't have an office manager, but all of
 16 the administrative support staff kind of things, she's
 17 in charge of, as well as other duties as assigned,
 18 including the ordering of voter registration application
 19 cards, which has turned into a pretty complicated
 20 process.
 21 She has within her group kind of a
 22 subgroup of administration. It's called "special
 23 projects." And it's managed by Leticia Salazar, and she
 24 is in charge of doing the training video for volunteer
 25 deputy registrars for election workers. She's in charge

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1 of organizing the seminar and making sure that all the
 2 materials are, you know, that we've got an organized
 3 process for putting the seminar together in August. As
 4 well as she's the Elections Division interface with the
 5 voter education campaigns that the Secretary's engaged
 6 in, you know, any kind of graphic design, website stuff,
 7 that's all special projects.
 8 Q. And that's a subgroup under Louri O'Leary?
 9 A. Under administration, that's right.
 10 Q. Okay.
 11 A. So she's kind of -- she's a manager, but she's
 12 a submanager under Louri.
 13 And then we've got the Legal Division and
 14 the director of it is -- the manager of it is Elizabeth
 15 Winn. She has been in the Secretary of State's Office
 16 for about 20 years.
 17 Q. So she's the institutional knowledge in the
 18 office.
 19 A. She's invaluable. Smart, pleasant, hard
 20 worker. Invaluable. And she's got several lawyers
 21 working for her as well as two support people.
 22 Q. Okay.
 23 A. We're about to have two more lawyers start
 24 three days from now, two days from now.
 25 And then we've got the voter registration

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1 team, Betsy Schonhoff is the manager of it. And they
 2 manage the team database and interface with the counties
 3 on any questions the counties have with regard to the
 4 team voter registration database. Betsy's job is to
 5 make sure that her ladies that she's got in her division
 6 are being productive, as well as interfacing with the IT
 7 part of the Secretary of State's Office, which is in a
 8 different division. So she's got one of the IT groups
 9 is devoted to voter registration so she interfaces with
 10 them, and she's the face of the Secretary of State's
 11 Office with the counties.
 12 Q. And when you mean "the face," or when you say
 13 "the face," do you mean the point person?
 14 A. She's the point person. If the counties have
 15 an issue, they get in touch with Betsy, and Betsy
 16 distributes it out to whoever needs to work on it.
 17 And then we've got the Electronic Funds
 18 Management portion of the office. Dan Glotzer is the
 19 one in charge of it. And they are in charge of passing
 20 out money.
 21 Q. So if SB 14 was implemented, would -- did you
 22 say Dan Glotzer?
 23 A. Glotzer.
 24 Q. Glotzer. The funding for SB 14, would it come
 25 through the Electronic Funds division?

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1 A. No. I don't think that there any funding with
 2 SB 14 except for the education component, and it would
 3 come through Electronic Funds Management. It would come
 4 through HAVA.
 5 Q. HAVA.
 6 A. Yes. HAVA grant.
 7 Q. So your testimony is it would not come
 8 through --
 9 A. Just that piece.
 10 Q. Okay.
 11 A. The voter education piece.
 12 Q. Okay.
 13 A. Any other costs associated with SB 14
 14 implementation would be absorbed by the regular budget.
 15 Q. Okay. All right. I think I understand
 16 that. So as the Director of Elections, were you hired
 17 to -- as a lawyer for the Secretary of State? You have
 18 a law degree. Do you -- were you hired to practice law?
 19 A. They feel that it's important. Ann McGeehan
 20 was a lawyer. They feel like it's important to have a
 21 lawyer in this position, because there's a whole lot of
 22 legal interpretation that has to go on necessarily with
 23 the election code and the rule making.
 24 Q. Do your job -- does your job title or does your
 25 job responsibilities include providing legal advice?



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BRIAN INGRAM

June 5, 2012

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1 requirement under SB 14?
 2 A. We have created an app, both for Android and
 3 for iPhones, and the content on that app can change to
 4 voter ID whenever we get precleared.
 5 Q. What other ways have the Special Projects Team
 6 made efforts to reach minority voters with the voter
 7 education plan about photo ID requirements?
 8 A. I don't know of anything specific that I can
 9 recall as we sit here today. There's a strong social
 10 media component, and it's multi-layered. I don't know
 11 what they all are.
 12 Q. Would you know if they were doing things other
 13 than relying on social media? I mean, you said they
 14 give you reports about what they are doing. Are those
 15 the kinds of things that are in those reports?
 16 A. No, they don't give me specific reports about
 17 what radio spots they're running where and what TVs
 18 they're running where. I mean, I don't know those kind
 19 of details. That's not -- would be a Rich question.
 20 Do you understand what I'm saying? The
 21 question about Spanish markets and African American
 22 markets and how those are being targeted with specific
 23 ads, I would never get in the middle of that level of
 24 detail. That would not be productive.
 25 Q. And have you directed your staff to engage

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1 those things, even though you're not keeping track of
 2 the what they are doing?
 3 A. As I told you before, I don't have to direct
 4 them than that; they are well aware of their obligations
 5 in that regard.
 6 Q. Does the -- or will the education plan to
 7 educate voters about photo ID requirements make use of
 8 newspapers?
 9 A. I don't know. Probably, but it would be a
 10 small component, I bet.
 11 Q. Do you know if any newspaper ads have been
 12 designed yet?
 13 A. I do not.
 14 Q. Does the education plan to educate voters about
 15 photo ID under SB 14 make use of television advertising?
 16 A. Yes.
 17 Q. Do you know if TV advertisements have been
 18 designed or produced yet?
 19 A. I do not know the status of those. I
 20 anticipate that they are in some level of production,
 21 because the goal is to have a plan in place ready to go
 22 by August the 15th or August 31st, in case this gets
 23 precleared, so I don't know how long the front end is on
 24 that, but they'll be ready.
 25 Q. So you expect that those will be ready by

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1 August 15th, but you don't actually know what their
 2 progress is?
 3 A. That's right.
 4 Q. And do you know if any of those TV ads are
 5 going to be in Spanish?
 6 A. I don't know. I know in the first round, they
 7 were.
 8 Q. Do you know if the plan will make use of radio
 9 ads?
 10 A. I assume that it will. The first phase did.
 11 Q. And do you know if any of those will be in
 12 Spanish?
 13 A. I imagine they will be, yes.
 14 Q. Okay. If we could go back your affidavit,
 15 which has been marked as MALC Exhibit 558.
 16 A. Yes, I have it.
 17 Q. If I could just direct you to Paragraph 7. You
 18 say there that, "In order to have a basic education
 19 program, the Secretary of State's Office would need a
 20 final decision by August 15th," and then you contrast
 21 that with a complete program, which would need a
 22 decision by no later than July 6th. I wonder if you
 23 could tell me: What's the difference between a basic
 24 program and a complete program?
 25 A. I cannot. That would be a Rich Parsons

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1 question.
 2 Q. Could you turn to the next page and tell me:
 3 Did you sign this affidavit?
 4 A. I did.
 5 Q. And so when you signed this affidavit, did you
 6 understand what Paragraph 7 meant?
 7 A. I understand that it's what Rich told me.
 8 Q. Now, you also state here that -- I'm sorry. As
 9 I said before, you say that you would need a final
 10 decision by August 15th in order to have even the basic
 11 education program. If I were to represent to you that
 12 the court has predicted that it won't make a decision
 13 until August 31st, does that mean the Secretary of State
 14 will not be able to have even a basic education program?
 15 A. It means that we're going to get it done.
 16 Q. Will the program be less well developed than
 17 whatever this basic education program that's
 18 contemplated in your affidavit is?
 19 A. I'm sure it will be the same as the August
 20 15th, just with less time to have an impact.
 21 Q. So what is does it mean that it will have less
 22 time to have an impact?
 23 A. It will be 16 more days down the road toward
 24 election.
 25 Q. Will it reach fewer voters?



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,	:	
	:	
Plaintiff,	:	Docket No. CA 12-128
	:	
vs.	:	Washington, D.C.
	:	Thursday, May 3, 2012
ERIC H. HOLDER, Jr.	:	3:05 p.m.
	:	
Defendant, and	:	
	:	
ERIC KENNIE, et al,	:	
	:	
Intervenor-Defendants.	:	

-----x

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE DAVID S. TATEL
UNITED STATES CIRCUIT JUDGE
THE HONORABLE ROSEMARY M. COLLYER
THE HONORABLE ROBERT L. WILKINS
UNITED STATES DISTRICT JUDGES

APPEARANCES:

For the Plaintiff:	MATTHEW FREDERICK, Esquire PATRICK SWEETEN, Esquire JONATHAN F. MITCHELL, Esquire (via phone) STACEY NAPIER, Esquire (via phone) Office of Attorney General of Texas 209 West 14th Street, 7th Floor Austin, TX 78701
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1 sworn, and then Judge Wilkins has a series of questions he
2 would like to make, advance to Mr. Ingram.

3 Would you proceed, Ms. White, please.

4 THE DEPUTY CLERK: Yes, Your Honor.

5 PLAINTIFF WITNESS KEITH INGRAM SWORN

6 JUDGE COLLYER: All right.

7 JUDGE WILKINS: Good afternoon, Mr. Ingram, this is
8 Judge Wilkins.

9 How are you this afternoon?

10 THE WITNESS: Doing well, Judge. How are you?

11 JUDGE WILKINS: Good.

12 I had some questions about the August 15th date and the
13 one place where I see that they appear in paragraph four in the
14 context of discussions with printing vendors.

15 THE WITNESS: Right.

16 JUDGE WILKINS: So I wanted to inquire further about
17 this issue.

18 THE WITNESS: Sure.

19 JUDGE WILKINS: Sir, you indicate that there are a
20 handful of forms that would need to change in order to comply
21 with SB 14 requirements.

22 Can you tell me what you mean by that sentence, how many
23 forms and what forms are there?

24 THE WITNESS: We're talking about seven forms there
25 both the election date, combination sign-in form and the early

1 voting combination sign-in form.

2 Then we've got a notice of the post of the polling
3 places for acceptable forms of ID.

4 Then we've got four documents related to provisional
5 voting including the affidavit, the envelope, the provisional
6 voting form itself, and the notice to provisional voters about
7 their right to get an ID within the next six days and get back
8 to the County Clerk. So it's seven forms.

9 JUDGE WILKINS: How many of those forms would you
10 anticipate needing to be printed? How many total of each?

11 THE WITNESS: Now that I don't know. This vendor
12 that I was talking to is Hart Intercivic. They print the
13 election kits for most of the counties in Texas. It depends on
14 how many each county orders.

15 I don't know because we've not had this log before, so I
16 don't know how many of the provisional ballots we're going to
17 need for people who don't have ID and then they've got six days
18 to go get the ID and get back to the County Clerk. I have no
19 idea. I know that the counties will be ordering from this
20 vendor. Other than that, I don't know. It's for all of Texas.

21 JUDGE WILKINS: Just so that I can understand. You
22 said that the counties will order them from the vendor. The
23 State doesn't do one order and then distribute them to the
24 counties? Instead, the counties order directly from the
25 vendor; is that what you're saying?

1 THE WITNESS: Yes, sir, that's right.

2 The State approves the forms and the counties order
3 them.

4 JUDGE WILKINS: Okay. Now you indicate that other
5 forms are going to be I guess they will begin production on
6 other forms in late June and during July; is that right?

7 THE WITNESS: That's right. That's the preferred
8 time for the orders to be received and done is in June. And
9 they're actually going to do all of the forms in June. What
10 we're talking about doing is as late as August 15th is a
11 supplemental election judge kit with these different forms in
12 it.

13 JUDGE WILKINS: All right. Well, my question to you
14 is this, why can't Texas simply print these seven forms as if
15 the law has been precleared and have it ready so that you
16 basically have two sets of forms, one if the law ends up being
17 precleared and another set of the seven forms in case it's not
18 precleared and depending upon our decision, you just end up
19 throwing one set of forms away and not using them at the
20 election?

21 THE WITNESS: Right. I guess the answer to that
22 question is cost more than anything else.

23 Secondly, I think it would probably confuse the
24 county officials more than a supplemental kit with the few
25 extra forms in it, you know what I mean.

1 We're dealing with various levels of sophistication and
2 resources at the county level, and so we're already doing or
3 contemplating doing something off the map and if we, you know,
4 the goal is to make it as uncomplicated as possible for those
5 people at the local level.

6 JUDGE WILKINS: All right. If we deal with the first
7 issue which is cost, what's your estimate as to how much that
8 would increase the cost?

9 THE WITNESS: I do not know.

10 JUDGE WILKINS: All right. We'll come back to that
11 in a minute.

12 I guess the other question that I have for you relates
13 to the training materials which are discussed in paragraph five
14 and there you say that the materials, those training materials,
15 you say that you need to get those materials to the counties
16 and local entities for the November early voting period and in
17 order to do so you need to have everything distributed by
18 August of 2010.

19 Help me understand with respect to these training
20 materials, are those printed by the same printing vendors or
21 are those printed inhouse or what do you mean by distributing?

22 THE WITNESS: That's actually going to be SB 14. If
23 it's going to be precleared, it's going to be a combination
24 video and power point presentation. And the reason we have got
25 an August date in here is we're kicking off the election worker

1 training with a seminar on August the 20th, and that's, that's
2 the big election worker training seminar for the fall. We're
3 going to have anywhere from 7 to 900 election workers present
4 in August that week and that's what we would need it for.

5 If we miss that then, you know, it's not the end of the
6 world, but it sure is better to have it on by August the 20th.
7 We'll have those materials ready by then, it's just that we
8 would like to use them then if we need to.

9 JUDGE WILKINS: Okay. So that's what you mean by
10 having everything distributed?

11 THE WITNESS: Right. We're going to start the
12 distribution at our seminar on August the 20th.

13 JUDGE WILKINS: And it's distributing videos and
14 power point presentations?

15 THE WITNESS: That's right.

16 JUDGE WILKINS: All right. Is that the type of thing
17 that can be distributed by, you know, e-mail or electronically
18 or what do you mean by needing to distribute those?

19 THE WITNESS: That's right and posted to our website
20 is the main way that we distribute the E materials. We post
21 them and the counties do training sessions at the local level
22 and run our video.

23 JUDGE WILKINS: Okay, and with respect to paragraph
24 six and voter education.

25 THE WITNESS: Right, that's the most flexible piece.

1 JUDGE WILKINS: All right. There's an indication
2 that if the voter education and that there's a road tour
3 scheduled to begin in August of 2010 and then it indicates the
4 next sentence in paragraph six that you anticipate that paid
5 advertising for the general election and education program
6 would start running in the August/September time frame.

7 So you just indicated that that was the most flexible.
8 Is that something that, that advertising would begin in
9 September that would cause any particular hardship or
10 prejudice?

11 THE WITNESS: No, I wouldn't think so. The advantage
12 to more time is more people can get the message.

13 The campaign is already in place. The spots are already
14 reserved, so it's just a question of changing the contents on
15 the commercials and so if we start the campaign with one set of
16 commercials, we get precleared, then it's easier to switch the
17 content for the remaining commercials. We would have just
18 missed some of the paid time that we've bought.

19 JUDGE WILKINS: All right. I guess if the deadline,
20 if we determine that there's not sufficient time between July
21 the 9th and August 15th, the July the 9th trial date and August
22 15th to rule and get our decision out and we need let's say
23 approximately two more weeks until around August the 29th or
24 the 30th, explain to me exactly how that would effect these
25 three areas of the printing of the forms and election

1 materials, the training materials and the voter education
2 campaign?

3 THE WITNESS: Right. The voter education campaign
4 would be, you know, relatively uneffected.

5 We would miss the seminar for the training of the mass
6 of 700 key people from counties with regards to the training.

7 And then the printing from the vendor, I don't know how
8 it would effect them. I don't know if it would make all of the
9 difference in the world or if they have gotten slack in their
10 estimate to me. I do know that I talked to the program manager
11 at Hart, she's responsible for making sure that these election
12 kits get printed. And, you know, I sort of had to push her a
13 little bit to get August the 15th. So I don't know if they've
14 got any slack after that or not.

15 JUDGE WILKINS: What information do you need in order
16 to give us an estimate of the cost increase if you print the
17 forms both ways?

18 THE WITNESS: I would just have to call the Hart
19 again. I could probably do that pretty quickly.

20 JUDGE WILKINS: What you would ask them would be what
21 the State has ordered in the past and just determine based on
22 that number of forms that were ordered in the past if we have
23 to do these seven forms both ways ordering the same number that
24 you've used in the past, how much increase cost that would be,
25 is that what you would be doing?

1 THE WITNESS: Yes, sir. Try to think about how we
2 would distribute them. That I think is a more complicated
3 piece than the cost.

4 JUDGE WILKINS: All right. I think those are my
5 questions.

6 Judge Tatel or Judge Collyer, if you have further
7 questions.

8 JUDGE COLLYER: I'm not sure, sir. Thank you, Judge
9 Wilkins.

10 This is Judge Collyer, Mr. Ingram.

11 I'm not sure that I quite understood your last comment
12 which was that it would be more complex to figure out how you
13 would distribute these materials, the seven documents you were
14 talking about if they, if our decision were not out by August
15 15th.

16 I thought that you said that you would just post them to
17 your website and then people could use them locally. Did I
18 miss a step of your analysis?

19 THE WITNESS: Yes, ma'am. The part that gets posted
20 is for the election worker training. These materials that
21 we're talking about that need to be printed in advance are what
22 the election workers use at the polling place whenever they're
23 dealing with voters.

24 Putting on an election is a very complex logistical
25 exercise and, you know, that's the part that I don't know how

1 we would make sure that the forms that the election judge has
2 at a particular polling place at Shelby County let's say, are
3 the right forms, not the wrong terms.

4 If we give her two sets and they've got two sets and
5 they have got to use their judgment we're inviting a layer of
6 complication that would be difficult to overcome on the fly.

7 JUDGE COLLYER: Well, the seven forms that you
8 identified, those forms would be relevant only if the and when
9 the law is proved, correct?

10 THE WITNESS: That's right.

11 JUDGE COLLYER: So if you printed them now according
12 to whatever numbers the county said they would need and then
13 held them in Austin, could you not then distribute them once
14 the Court's decision was out but well in advance of any
15 November election?

16 THE WITNESS: Conceivably, but the problem that I'm
17 trying to, probably not doing a very good job of explaining, is
18 that these Hart Intercivic sends out kits in response to county
19 orders. So if a county has ordered 10,000 of these kits and
20 forms made they come in packages.

21 You know, if later we do a supplemental kit and which is
22 what we're thinking about doing by August the 15th, then the
23 county could order as many of those as they want and would have
24 all that they need.

25 If we submit all of the forms to Hart and then print

1 them all in response to an election kit order from a county,
2 then I don't know how, you know, it's another question for Hart
3 how they could do that, how they could make sure that these
4 forms are only if the law is precleared and the rest of them
5 you can use.

6 You know what I'm saying? It adds a layer of complexity
7 that would have to be thought about at least.

8 JUDGE COLLYER: Well, what you're saying is that the
9 printer would have to understand that forms one through 15 are
10 to be put into the election kit for a response to any orders
11 from the counties and forms 16 through 22, are to be held for
12 supplemental distribution on order, order from the State
13 Government. That's what we're really saying isn't it?

14 THE WITNESS: Exactly. That's what we're talking
15 about. That has to be done by August the 15th. They need to
16 get to work August 15th if we are going to need these other
17 forms or not.

18 We've got the forms. I think all of them I've seen and
19 I'm pretty sure they're in final form. It's not a question of
20 making sure that we have got those forms. It's a question of
21 the time line for ordering and getting them into the kits.

22 JUDGE COLLYER: Well, my point is that I thought you
23 said earlier that you were going to be distributing all of the
24 traditional election forms the end of June, sometime in July
25 and we're going to do a supplemental distribution in August; is

1 that right?

2 THE WITNESS: That's right.

3 JUDGE COLLYER: So if the supplemental distribution
4 happened in the first week of September instead of in August,
5 what difference would it make to your election managers? I
6 mean, you would miss the August 20th training date, I agree
7 with that, but other than that, what difference does it make?

8 THE WITNESS: Well, I don't know. I know that
9 whenever I had this conversation with Hart August the 15th is
10 the date that they told me they needed the decision so that the
11 counties could start ordering to make sure that they all got
12 them. It might not make any difference. I don't know. What I
13 know is what they told me is that they needed it by August the
14 15th.

15 JUDGE COLLYER: But that was for the counties to get
16 it by what date? It can't be for them to get it before
17 November because Texas is large, but it's not that large. So
18 it must be before a date certain.

19 Do you know what date that is?

20 THE WITNESS: I do not. And I imagine that it varies
21 from county to county. But they've got to have it in
22 sufficient time to make sure that each precinct election judge
23 has it in their kit.

24 You know, it's Bexar County alone has about 385
25 precincts so the operation that they have got in place in their

1 warehouse is just a phenomenal logistical operation where they
2 have got to make sure that all 385, they've got to have it for
3 everybody too which is a good 15, 17 days before the election.
4 But either way they have got to have it in time to get it
5 distributed to each kit.

6 I don't know, I don't have any idea how much time it takes
7 for the printer, how much time it takes for the shipping, how
8 much time it takes for the logistical stuff at the end. But
9 the people who have been doing this say that they need at least
10 until by August 15th. You know, I don't want to second guess
11 them.

12 JUDGE COLLYER: Did you have questions? Yes, Judge
13 Tatel?

14 JUDGE TATEL: Yes.

15 Mr. Ingram, this is Judge Tatel. How are you today?

16 THE WITNESS: Sure.

17 JUDGE TATEL: One is on the cost. I assume the State
18 has budgeted this whole thing based on the assumption that you
19 will be able to implement this statute in November, right?

20 THE WITNESS: Yes, sir.

21 JUDGE TATEL: So when Judge Wilkins was asking you
22 about the cost, I assume what we're taking about is the fact
23 that if the materials might be prepared, materials that would
24 be prepared to be used if a voter ID law is approved might not
25 be needed if it isn't approved. So there's no additional cost

1 is there?

2 You are assuming in your budget that you are going to
3 have to prepare all of this, right?

4 THE WITNESS: That's right.

5 JUDGE TATEL: So the only question really --

6 THE WITNESS: If we had been precleared
7 administratively --

8 JUDGE TATEL: Exactly.

9 THE WITNESS: -- a long time ago, a few months ago --

10 JUDGE TATEL: No, I understand.

11 THE WITNESS: -- then we wouldn't have to print two
12 sets of provisional ballots and provisional ballot envelopes.

13 JUDGE TATEL: Yes, I understand that.

14 My only point is that you're now, the State is now in
15 the situation since it hasn't been precleared where it has to
16 prepare both sets anyway. So I don't, I guess I don't see
17 where there's any additional cost to the State.

18 THE WITNESS: Right.

19 JUDGE TATEL: My second point is more general and
20 that is as you think about your answers to these questions,
21 keep in mind that what you're hearing here is you have a Court
22 that is prepared to lean over backwards to get this case tried
23 and decided so that if the statute is precleared, Texas can
24 implement it for the November election. The Court is really
25 prepared today to do everything we can to accomplish that.

1 THE WITNESS: Yes.

2 JUDGE TATEL: I realize that you are hearing from
3 your people they have a management problem and I totally
4 understand the problem they've got. They probably, I can
5 understand why they'd like it by August 15th, they would
6 probably like it a lot earlier, right?

7 THE WITNESS: Yes.

8 JUDGE TATEL: Of course. But the question is given
9 the State's, you know, preeminent interest in getting this
10 thing done, you know, can you and your colleagues, you know,
11 get from your people a little more flexibility at the other end
12 of this process?

13 Namely, the Court's need perhaps for a little more time
14 to get the decision done even though that might cause some
15 increased administrative burdens for your people if they
16 understood that well, yes, it's going to be more difficult, we
17 may have to do things a little differently but it might be
18 worth it if we can get a decision in time. If they would look
19 at it that way, I think -- do you see my point?

20 THE WITNESS: Yes, sir, I completely see your point.

21 I do want to make a --

22 JUDGE TATEL: Now if you tell us look, we've really
23 thought about it and there's absolutely no way we can have, use
24 this statute at the November election unless we have all of
25 this done by August 15th, if that's in fact your bottom line,

1 we need to know that.

2 But what you're hearing from us today is, is one of the
3 questions we have in our mind about whether we can accommodate
4 Texas' interests, getting this case tried and decided is
5 whether that's a real date, okay.

6 THE WITNESS: Right. And as I sit here today without
7 pushing on Hart some more, it's a real date. Maybe if I push
8 on Hart some more, I can have a little more flexibility.

9 I'm sure they have built in a little bit, but I don't
10 know if it's two days or two weeks. I have no idea.

11 I do know that everybody is interested in doing whatever
12 they can do to make this work. This has been a very unique
13 year in Texas elections and we've had phenomenal work effort by
14 the counties and, you know, everybody involved from the
15 Secretary of State's office to the election clerks in the local
16 level have all done a phenomenal job of pushing themselves to
17 the limit of making this happen already, already.

18 JUDGE TATEL: I'm sure they have.

19 THE WITNESS: I think that is just the way this year
20 is going to be and I think everybody is ready to do whatever it
21 takes to get it done.

22 JUDGE WILKINS: If I could just ask a couple of
23 follow up questions.

24 When you describe a kit that's ordered by a county, and
25 then you know, a supplemental kit that you are envisioning

1 being ready by August the 15th, just help me understand what
2 would be in those two kits? What would be in the first kit and
3 what would be in the supplemental kit?

4 THE WITNESS: Right. The first kit would be all of
5 the normal forms that, you know, assuming this law doesn't get
6 precleared will be ready for use, and that's the kit that
7 counties are going to start ordering here in a couple of weeks.

8 For a supplemental kit, it will consist of these seven
9 forms that are different, so the county, the word will come on
10 or before August 15th, the counties will order the number of
11 supplemental kits they are going to need, the printer will type
12 set it, and print them and send it out.

13 JUDGE WILKINS: Just so that we're clear, a decision
14 could be made to just send out one kit that has the normal
15 forms as you call them and then two sets of the seven
16 additional forms.

17 One set would be if the law is precleared and one set of
18 seven forms would be if the law is not precleared and when the
19 county makes its order that one time they would get basically a
20 kit that would be divided into three parts in that fashion.

21 And help me understand again why if that were done what
22 would be the logistical problem of the county then just
23 discarding the kit of the seven forms that will not be used on
24 election based on our decision whether it's precleared or not?

25 THE WITNESS: Right. If that's the way that Hart can

1 do it, then I don't see that that would create a terribly -- I
2 mean, there will be, I can promise you, out of 254 counties
3 there will be some number rebel who will disregard the wrong
4 set of seven, but I don't know how many that will be.

5 And, you know, the reason I'm thinking that it adds some
6 complexity because if they get a normal set and then y'all deny
7 preclearance, then they don't ever have to think about anything
8 else. From my perspective that makes it easier for them.

9 If y'all decide to preclear it, you are right, they
10 would have had to think about it anyway and they wouldn't have
11 to print it twice anyway and it's just going to be what it's
12 going to be.

13 But that's just a part of getting it done, but the
14 decision about whether we have to do it can go as long as
15 August 15th. But, you know what I'm saying? It's just --

16 JUDGE WILKINS: I guess what I'm trying to understand
17 is why can't the State work with your vendor to say that we're
18 going to have basically three sets of forms?

19 THE WITNESS: Right.

20 JUDGE WILKINS: Set A are quote unquote the normal
21 forms.

22 Set B are the seven forms as if the law is precleared.

23 And set C are the seven forms if the law is not
24 precleared.

25 And when the county orders however many kits they get

1 one kit that has a set of A forms, B forms and the C forms.
2 They make one order and they get all of those forms. Once we
3 make our decision, you or the others and the Secretary of
4 State's office can say okay, at the election we'll use forms A
5 and B, throw away C or you'll use forms A and C, throw away B.

6 THE WITNESS: Right.

7 JUDGE WILKINS: Why can't we do that and why can't we
8 buy ourselves some additional time by proceeding in that
9 fashion?

10 THE WITNESS: All I can say is what I said before, if
11 you give somebody the opportunity to make a mistake, the
12 chances go up that they will. And so that's what we were
13 trying to avoid.

14 If we, I don't know if we actually buy ourselves any
15 time but it's worth talking to Hart about and finding out.

16 JUDGE WILKINS: Well, don't you automatically buy
17 yourselves some time because you know right now what the forms
18 will have to look like?

19 THE WITNESS: Right.

20 JUDGE WILKINS: You know what the normal forms that
21 would be in my example set A would look like. You would know
22 what the forms in set B would look like, and you would know
23 what the forms in set C should look like.

24 So you could go ahead and have all of those forms
25 designed. They could all be ordered in a couple of weeks under

1 your normal time frame, and it will just be a matter of the
2 additional cost of having, you know, the forms B and C instead
3 of one set of those, right?

4 THE WITNESS: That's right. I don't know, that ought
5 to work. I can talk to Hart and see what they think.

6 JUDGE WILKINS: All right. Well, we can -- why
7 don't -- we'll follow up with you about, I'm sure about some
8 further direction in that regard.

9 THE WITNESS: Great.

10 JUDGE WILKINS: That's all I have, Judge Collyer, on
11 that point.

12 JUDGE COLLYER: Thank you, Judge Tatel.

13 Did you have any other questions?

14 JUDGE TATEL: No.

15 JUDGE COLLYER: Did any other of the parties in light
16 of the Court's questions wish to advance any other questions to
17 Mr. Ingram?

18 MS. WESTFALL: Yes, Your Honor.

19 JUDGE COLLYER: Since we are at the telephone, we
20 need to speak right at the microphone or else he won't be able
21 to hear you.

22 This is Elizabeth Westfall, Mr. Ingram, is that correct?

23 MS. WESTFALL: Yes.

24 JUDGE WILKINS: Who represents --

25 That's correct, isn't it, Ms. Westfall?

1 MS. WESTFALL: Yes.

2 JUDGE COLLYER: Who represents the United States.

3 MS. WESTFALL: Good afternoon, Mr. Ingram. This is
4 Elizabeth Westfall for the Attorney General.

5 Have you drafted the alternative forms that you
6 referenced earlier in your testimony?

7 THE WITNESS: Yes.

8 MS. WESTFALL: Have you approached other vendors
9 besides Hart to see whether they could prepare and print these
10 forms in a more rapid manner?

11 THE WITNESS: I have not. That's between Hart and
12 the county which vendor they want to use.

13 MS. WESTFALL: Mr. Ingram, how long have you worked
14 in the elections office?

15 THE WITNESS: I have been there since January the
16 5th.

17 MS. WESTFALL: Are you aware of last minute
18 supplemental materials being submitted and circulated in
19 polling places previously?

20 THE WITNESS: No. I did talk to the program manager,
21 the project manager at Hart about that. She said that they
22 talked about doing supplemental election kits before but they
23 hadn't actually done one.

24 MS. WESTFALL: Thank you. I have no further
25 questions.

1 JUDGE COLLYER: All right, thank you.

2 Mr. Hebert, yes.

3 This is Jerry Hebert, Mr. Ingram. He represents
4 intervenors.

5 Go ahead, sir.

6 MR. HEBERT: Thank you, Your Honor.

7 I only have a couple of questions.

8 First, Mr. Ingram, do you recall a time when a Texas
9 Federal Court invalidated a state law that prohibited voters
10 from carrying election pamphlets into the polling place? Do
11 you remember that about a decade or so ago?

12 Well, whether you remember it or not, let me ask the
13 follow up question because that's the more important one.

14 At that time isn't it true that the Secretary of State's
15 office at the last minute just before the election sent a
16 notice to all of the election officials who were running the
17 election advising them just prior to the election that voters
18 could in fact do this in light of that court ruling?

19 THE WITNESS: I don't know anything about that. But
20 it wouldn't surprise me. That would be a much easier task to
21 give notice out to the counties.

22 MR. HEBERT: Okay. Well, my point was that it is
23 somewhat typical I think for the Secretary of State just prior
24 to the election to communicate with election officials
25 statewide about some either last minute change or some last

1 minute form; isn't that true?

2 THE WITNESS: I don't know if that's true or not. I
3 do know that it is very common for the Secretary of State's
4 office to communicate with county officials statewide on a
5 regular basis.

6 MR. HEBERT: One final question, on your August 20th
7 seminar that you are doing on the election worker training, the
8 Secretary of State's office set that date didn't they?

9 THE WITNESS: That's right.

10 MR. HEBERT: So you set that date knowing the
11 election schedule?

12 THE WITNESS: That's right. And we delayed it. It
13 is usually in July.

14 MR. HEBERT: By the way, isn't true that your office
15 also said during the legislative debate on the voter ID that
16 the only fiscal impact of implementing it would be two million
17 dollars, but that the two million dollars would be paid
18 entirely with Federal HAVA money and no state money would be
19 used?

20 THE WITNESS: I don't know what they did in the
21 legislative session.

22 I do know that in the legislative session they were
23 planning on this law going into effect on January 1st and that
24 way we wouldn't have had to print two separate forms.

25 MR. HEBERT: Right. But you don't know anything

1 about whether or not the representations from your office were
2 that that HAVA money would cover it entirely?

3 THE WITNESS: HAVA money is for the education --

4 MR. SWEETEN: Objection, Your Honor.

5 JUDGE WILKINS: Overruled once.

6 JUDGE COLLYER: Thank you.

7 MR. HEBERT: What was your answer, Mr. Ingram, I
8 didn't hear it?

9 THE WITNESS: HAVA money that they were talking about
10 is for the voter education piece that has to be 15 requires for
11 the voters to be aware of the new ID requirements and where
12 they can get a free ID.

13 MR. HEBERT: I'm not sure I understand your answer.

14 Was that a yes or I couldn't quite follow what you were
15 saying. I'm sorry.

16 THE WITNESS: I'm sorry.

17 The HAVA money that they were talking about, I don't
18 know, I wasn't there, but I'm sure that the HAVA money that
19 they were discussing using was for the voter education campaign
20 that's required by SB 14 so that the voters know what ID is
21 going to be required and where they can get a free one.

22 MR. HEBERT: And that would not include some of the
23 forms necessary to give the voters?

24 THE WITNESS: No.

25 MR. HEBERT: No?

1 THE WITNESS: No.

2 MR. HEBERT: Okay. Thank you.

3 JUDGE COLLYER: All right. Is everybody satisfied
4 with their questions to Mr. Ingram?

5 MR. SWEETEN: Yes, Your Honor.

6 The State of Texas has no questions.

7 JUDGE COLLYER: All right. The State of Texas says
8 it has no questions, Mr. Ingram.

9 And forgive me for asking, are you Mr. Sweeten or
10 Mr. Frederick?

11 MR. SWEETEN: I'm Mr. Sweeten.

12 JUDGE COLLYER: That was Mr. Sweeten because he said
13 I'm telling Mr. Sweeten because he can't hear you when he said,
14 he said Texas has no questions for you, sir.

15 So you can now step down and thank you for your
16 attendance.

17 THE WITNESS: Shall I stay on the line or --

18 JUDGE COLLYER: We're perfectly happy to have you
19 stay if you wish as a member of the public, or as far as we're
20 concerned, you can hang up and go about your business.

21 THE WITNESS: Thank you, ma'am.

22 JUDGE COLLYER: Thank you, sir.

23 (Witness excused.)

24 All right, the next set of issues related to what the
25 parties still have to do or not do or might accomplish or might