

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,

Plaintiffs,

v.

GREG ABBOTT, *et al.*,

Defendants.

Civil Action No. 2:13-cv-193 (NGR)

UNITED STATES OF AMERICA,

Plaintiff,

TEXAS LEAGUE OF YOUNG VOTERS
EDUCATION FUND, *et al.*,

Plaintiff-Intervenors,

TEXAS ASSOCIATION OF HISPANIC
COUNTY JUDGES AND COUNTY
COMMISSIONERS, *et al.*,

Plaintiff-Intervenors,

v.

STATE OF TEXAS, *et al.*,

Defendants.

Civil Action No. 2:13-cv-263 (NGR)

TEXAS STATE CONFERENCE OF NAACP
BRANCHES, *et al.*,

Plaintiffs,

v.

CARLOS CASCOS, *et al.*,

Defendants.

Civil Action No. 2:13-cv-291 (NGR)

LENARD TAYLOR, *et al.*,

Plaintiffs,

v.

STATE OF TEXAS, *et al.*,

Defendants

Civil Action No. 2:13-cv-348 (NGR)

UNITED STATES MOTION TO ENFORCE INTERIM REMEDIAL ORDER

On August 10, 2016, this Court entered an Order directing the State of Texas, Secretary of State Carlos Cascos, and other officials to implement a set of directives for the November 8, 2016 election. *Veasey v. Perry*, No. 2:13-cv-193, Order Regarding Agreed Interim Plan for Elections (“Remedial Order”) (S.D. Tex. Aug. 10, 2016) (ECF No. 895). The Court ordered:

Commencing with any elections held after the entry of this Order and until further order of the Court, Defendants shall continue to educate voters in subsequent elections concerning both voter identification requirements and the opportunity for voters who do not possess SB 14 ID and cannot reasonably obtain it to cast a regular ballot.

Remedial Order ¶ 11 (second emphasis added).

Despite the Remedial Order’s clarity, Texas’s voter education and poll worker training documents depart from it. Rather than educating voters and poll officials about opportunities to

cast a regular ballot for those who “do not possess SB 14 ID and cannot reasonably obtain it,” the State has recast that language to limit the opportunity to cast a regular ballot solely to those voters who present SB 14 ID or who “have not obtained” and “cannot obtain” SB 14 ID. That standard is incorrect and far harsher than the Court-ordered standard it would displace. By recasting the Court’s language, Texas has narrowed dramatically the scope of voters protected by the Court’s Order. Moreover, the standard the State’s training and educational materials currently describe has already been rejected by this Court and the Fifth Circuit. At this critical stage, such materials should maximize accuracy and minimize confusion. Texas’s materials do neither.

Plaintiffs have objected to the State’s language repeatedly to attempt to resolve the matter short of court involvement, but Texas has refused to conform all voter education and poll worker training materials to the standard ordered by this Court that voters who “do not possess SB 14 ID and cannot reasonably obtain” SB 14 ID may cast a regular ballot. The State is about to begin a mass media campaign that should educate voters to whom this Court has restored the ability to cast a regular ballot, and an erroneous message would compound—rather than cure—the harm caused by SB 14. The United States therefore respectfully moves to enforce the Remedial Order.

I. The Remedial Order Establishes Clear Standards Under Which Voters Without SB 14 ID May Cast a Regular Ballot.

This Court’s August 10 Remedial Order mandates that

Voters who appear on the official list of registered voters and present a valid voter registration certificate, a certified birth certificate, a current utility bill, a bank statement, a government check, a paycheck, or any other government document that displays the voter’s name and address and complete and sign a reasonable impediment declaration shall be permitted to vote using a regular ballot.

Remedial Order ¶ 2. The Court directed the State to use a form attached to the Remedial Order as the English-language reasonable impediment declaration. Remedial Order ¶ 3. This form in turn instructs poll workers that “If a voter appears on the official list of registered voters, but does not possess an acceptable form of photo identification . . . due to a reasonable impediment, . . . steps shall be taken by the election officer to allow the voter to cast a regular ballot.”

Remedial Order Ex. 1 at 1 (emphasis omitted). The Court then ordered Texas to educate voters and poll workers concerning the “opportunity for voters who do not possess SB 14 ID and cannot reasonably obtain it to cast a regular ballot.” Remedial Order ¶¶ 11-12.

The Remedial Order thereby established clear guidelines governing who may use a reasonable impediment declaration and present non-SB 14 identification to establish identity at the polls. There are two criteria only. *First*, the voter must not “possess” SB 14 ID. Remedial Order ¶ 11, Ex. 1 at 1. *Second*, the lack of SB 14 ID must result from “a reasonable impediment” or the fact that the voter “cannot reasonably obtain it.” *Id.*

II. Plaintiffs Have Attempted in Good Faith to Resolve this Issue, but Texas Has Refused to Change its Incorrect Voter Education and Poll Worker Training Materials.

On August 12, private plaintiffs alerted the State that VoteTexas.gov described the Remedial Order using language more restrictive than the Order’s actual terms. They pointed to a press release and website content suggesting that only voters who are “not able to obtain” SB 14 ID can vote using a reasonable impediment declaration, but without explanation, Texas declined to correct these materials. *See* Email from Jennifer Clark to Angela Colmenero (Aug. 12, 2016) (Ex. 1). On August 17, private plaintiffs similarly identified an improper update to VoteTexas.gov stating that only “voters who have not been able to obtain” SB 14 ID can vote using a reasonable impediment declaration.” *Required Identification for Voting in Person*,

VoteTexas.gov, at <http://www.votetexas.gov/register-to-vote/need-id> (Ex. 2). On August 19, the State responded to these persistent objections and denied that the language was misleading or inconsistent with the Remedial Order. That same day, Texas reissued its press release with language restricting availability of a reasonable impediment declaration to voters who “cannot obtain” SB 14 ID. Press Release, Office of the Texas Secretary of State, Voters Who Cannot Obtain One of Seven Forms of Approved Photo ID Have Additional Options at the Polls (Aug. 19, 2016), available at <http://www.sos.state.tx.us/about/newsreleases/2016/081916.shtml> (Ex. 3).

The United States and private plaintiffs have continued to identify and object to restrictive language that the State has incorporated in voter education and poll worker training materials, including the Texas Poll Watchers Guide, Election Inspector Handbook, Early Voting Ballot Board Handbook, Qualifying Voters Handbook, and Toolkit for Community Organizations and Elected Officials. On August 30, the United States formally requested that Texas eliminate any language limiting availability of a reasonable impediment declaration to voters who “have not obtained” and “cannot obtain” SB 14 ID from voter education and poll worker training materials. See Email from Daniel J. Freeman to Angela Colmenero (Aug. 30, 2016) (Ex. 4) (noting objections made on August 22, 23, 29, and 30). The United States requested that the State respond by September 2. On September 6, Texas responded to the United States’ email and asserted that the “cannot obtain” or “unable to obtain” standard is consistent with the Remedial Order. Email from Angela Colmenero to Daniel J. Freeman (Sept. 6, 2016) (Ex. 5).¹ The United States then met and conferred with the State by telephone to

¹ The State bases its refusal in part on the claim that it “did not learn about your concerns until several days after this language was made public on the Secretary of State’s website.” *Id.* This waiver argument is incorrect and unavailing. As noted above, private plaintiffs informed Texas on September 12—the day after the State first circulated proposed voter education materials—that a press release and a section of VoteTexas.gov “suggest[] that the declaration is only available to those ‘not able to obtain ID’ rather than those that have a ‘reasonable impediment’ or difficulty obtaining ID.” Email from Jennifer Clark to

confirm that the parties are at an impasse and that the State would not modify language currently posted on VoteTexas.gov.

III. The State’s Training and Educational Materials Rewrite the Reasonable Impediment Standard Agreed Upon by the Parties and Ordered by this Court.

Texas’s failure to communicate the Remedial Order’s actual language and meaning undermines this Court’s efforts to protect the voting rights of all Texas citizens. By instructing its citizens and poll officials that the reasonable impediment process is available just to voters who “have not obtained” SB 14 ID, Texas would prevent from casting a regular ballot those voters who “do not possess” SB 14 ID but nonetheless are eligible to cast a regular ballot under the Remedial Order. For instance, voters whose identification has expired by more than four years, whose identification has been lost or stolen, and who have surrendered identification to the State have all “obtained” SB 14 ID but no longer “possess” it.² Texas’s instructions would require its poll officials to deny those voters access to a regular ballot. Those instructions contravene the Court’s Remedial Order.

More critically, Texas would have its citizens and poll officials believe that only those voters who “cannot obtain” SB 14 ID are eligible to cast a regular ballot without presenting appropriate identification. But that of course is not so. The scope of this Court’s remedy is set in plain language (to which the State agreed): those voters who have “a reasonable impediment”

Angela Colmenero ¶ 5, bullets 2-3. More importantly, moving forward, Texas can and should educate voters and poll workers accurately concerning all opportunities to cast a regular ballot under the Remedial Order.

² “Possess” means “to have and hold as property.” *Possess*, Merriam Webster, at www.merriam-webster.com/dictionary/possess (last accessed Sept. 6, 2016). The United States does not therefore contend that voters who have obtained SB 14 ID and have continued, ready access to it do not “possess” such identification if they do not have it on their person when they appear to vote at a polling place. For example, voters who arrive at polling places only to realize that their valid SB 14 ID remains at home nonetheless “possess” SB 14 ID. To the extent that the State is now concerned that the language to which it agreed is unclear, it may further clarify that language to voters and poll workers with a message such as, “If you forget your wallet at home, you still ‘possess’ your driver license for voting purposes.”

to obtaining SB 14 ID or “cannot reasonably obtain it” must be offered the opportunity to cast a regular ballot. The State’s instructions would unduly restrict that opportunity.

That the State has stripped the word “reasonably” from the Court-ordered phrase “cannot reasonably obtain” matters significantly. That is because impediment—and not metaphysical impossibility—is the linchpin of the Remedial Order. *See* Order at 1 (ECF No. 859) (directing the parties to develop remedial plans that incorporate “an impediment or indigency exception”). The State’s excessively rigid “cannot obtain” standard appears to impose an impossibility standard on affected voters not contemplated by the parties’ agreement or this Court’s Remedial Order. That Order is of limited use if Texas refuses to train poll workers and educate voters accurately on its plain language and scope.

This issue is not new. The Fifth Circuit decisively rejected the State’s claim that only voters who “cannot obtain” required documents are injured by strict voter identification requirements and held that SB 14 abridged the voting rights of individual plaintiffs who faced “excessive burdens” or “a substantial obstacle to voting.” *Veasey v. Abbott*, No. 14-41127, 2016 WL 3923868, at *25 (5th Cir. July 20, 2016) (en banc); *see also id.* at *42 (Higginson, J., concurring) (“[I]f a Section 2 burden is cognizable only if it is impossible for some minority voters to comply with the challenged law, Justice Scalia must have mistakenly stated that Section 2 would be violated if ‘a county permitted voter registration for only three hours one day a week, and that made it more difficult for blacks to register than whites.’” (quoting *Chisom v. Roemer*, 501 U.S. 380, 408 (1991) (Scalia, J., dissenting))). Texas thus appears to resurrect here the very issue it lost in litigation. *See Veasey v. Perry*, 71 F. Supp. 3d 627, 686, 694-98 (S.D. Tex. 2014), *aff’d in relevant part*, No. 14-41127, 2016 WL 3923868 (5th Cir. July 20, 2016) (en banc) (concluding that SB 14 violated Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, despite

declining to find that “any particular voter absolutely cannot get the necessary ID or vote by absentee ballot.”).

By now effectively reworking the Remedial Order’s text —text to which the State agreed, *see* Int. Submission of Agreed Terms ¶ 11 (ECF No. 877); Supp. to Submission of Agreed Terms Ex. A at 1 (ECF No. 893-1)—Texas undermines that Order and perpetuates the discriminatory impact of SB 14. The inaccurate standard the State has published to its poll officials and voters is an erroneous substitute for the plain language of this Court’s Remedial Order. That standard has been previously rejected by this Court and the Fifth Circuit. It should be rejected again here, now, and with finality.

IV. Expedited Relief Is Necessary to Preserve This Court’s Remedy.

The Remedial Order contemplated that details of the State’s plan for educating voters and training election workers might be “addressed in one or more future orders.” Remedial Order at 4. Texas’s refusal to communicate the actual language of the Remedial Order to voters and poll workers now necessitates a further order. But time is short. The State is developing printed materials and mass media advertising that improperly narrow the Remedial Order. Voters are receiving inaccurate or misleading information that suggests they will not be able to cast ballots that count in November. Limited funds are being used on inaccurate materials. This Court’s opinion finding that SB 14 violates the Voting Rights Act identified the importance of accurate voter education concerning complex voter identification procedures. *See Veasey v. Perry*, 71 F. Supp. 3d at 642, 649, 651, 667-68, 677-79; *see also Veasey v. Abbott*, 2016 WL 3923868, at *16, 25-26. Therefore, the United States respectfully requests that this Court expedite any responsive briefing and schedule any argument at the Court’s earliest convenience.

The United States respectfully requests that the Court enforce the Remedial Order by further enjoining the State to comply with the Remedial Order in the following specific respects:

- Update and redistribute all electronic resources to reflect that all voters who do not possess SB 14 ID and have a reasonable impediment to obtaining such identification may cast a regular ballot using a reasonable impediment declaration, including VoteTexas.gov and the Toolkit for Community Organizations and Elected Officials.
- Issue corrections to past press releases and other public statements by the State of Texas, the Secretary of State, counsel for the State, and other state officials that improperly restrict the availability of a reasonable impediment declaration and incorporate such corrections in electronic archives.
- Correct all voter education and poll worker training materials that have not yet been printed to reflect the text of the Remedial Order.
- Print and distribute corrections to accompany voter education and poll worker training materials that already have been printed with inaccurate descriptions of the Remedial Order.
- Ensure that all future print, radio, and television advertisements accurately reflect the text of the Remedial Order.
- Cease any further communications that inaccurately reflect the availability of a reasonable impediment declaration under the Remedial Order.

A proposed order is attached to this motion as Exhibit 6. Private plaintiffs join the filing of this motion.

Date: September 6, 2016

KENNETH MAGIDSON
United States Attorney
Southern District of Texas

Respectfully submitted.

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

/s/ Daniel J. Freeman

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CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2016, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Daniel J. Freeman

Daniel J. Freeman
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EXHIBIT

1

Freeman, Daniel (CRT)

From: Clark, Jennifer [clarkj@mercury.law.nyu.edu]
Sent: Friday, August 12, 2016 10:36 AM
To: angela.colmenero@TexasAttorneyGeneral.gov;
matthew.frederick@texasattorneygeneral.gov; Perez, Myrna
Cc: VOTTexasID (CRT); All Texas Voter ID
Subject: Education and Training: Input
Attachments: 2016-08-12 Input on Poster and Website.docx; 2016-08-12 Supplemental CBOs.docx;
2016-08-12 Supplemental Elected Officials.docx; 2016-08-11 Identified Website Concerns.rtf

Good morning, Angela:

Private plaintiffs write in advance of this morning's conversation to provide 5 pieces of input.

1. Attached to this email please find suggested edits to the poster and the website updates you shared with us yesterday, and which you agreed to review should we provide them to you by noon today.
2. Also attached to this email please find a non-exhaustive list of CBOs to supplement the document you kindly shared with us yesterday. We cross-checked this list with yours to avoid duplications. Please confirm that these entities will be added to your distribution and outreach list.
3. Also attached to this email please find a non-exhaustive list of elected officials/bodies we would like to receive the elected official toolkits. Please confirm that these elected officials/bodies will be added to your distribution and outreach list.
4. Your August 11 email indicated that there are particular pages on VoteTexas.gov and on the SOS's main website that will be updated by COB Monday. Some of those pages overlap with our feedback reflected in the attached chart. We urge you to consider our feedback as you update these sites. Note that we also have identified at least one page on the DPS site that requires updating.
5. We also have reviewed the updates to VoteTexas.gov that you identified and offer the following feedback:
 - The banner language on this page, http://www.sos.state.tx.us/sos_espanol.shtml, which provides a statement in Spanish translation, should also be translated into Spanish: "Notice: The Office of the Secretary of State is in the process of updating its websites to reflect a court order issued on August 10, 2016, relating to identification requirements for voting."
 - We reiterate our issues with the "Press Release: [Voters in November election have additional ID options announces Secretary Cascos](#)," including that it fails to inform voters that (1) the reason given for being unable to obtain SB 14 ID cannot be questioned and (2) the address on the supporting documentation need not match the current registration address. The statement also suggests that the declaration is only available to those "not able to obtain ID" rather than those that have a "reasonable impediment" or difficulty obtaining ID and does not include other examples of qualifying ID such as out-of-state ID.
 - Though you have updated the (now called) "Voter ID Education Resources" section of VoteTexas.gov in English and Spanish (<http://www.votetexas.gov/resources/voter-id-education-materials>), the location of the language in this document suggests that the alternative documents, used in support of a RI declaration, also have a four year expiration point. However, the expiration period only applies to SB 14 IDs. We suggest that this language be moved up in the document to the section just below where SB 14 IDs are identified. The document should also note that the address on the supporting documentation need not match the registration address.

And the statement also suggests that the declaration is only available to those “not able to obtain ID” rather than those that have a “reasonable impediment” or difficulty obtaining ID

- Though you updated the document at this link, <http://www.votetexas.gov/es/recursos/folletos-educativos-sobre-identificacion-para-votar>), we urge you incorporate the same suggestions as above, though in Spanish translation.

Thank you,

Jennifer L. Clark
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EXHIBIT

2

[Mobile Version](#)

Required Identification for Voting in Person

Press Release: Voters who cannot obtain one of the seven forms of approved photo ID have additional options at the polls

[Frequently Asked Questions](#)

On August 10, 2016, a federal district court entered an order changing the voter identification requirements for all elections held in Texas after August 10, 2016 until further notice. As a result, voters who have obtained an acceptable form of photo identification for voting listed below are still required to present it in order to vote in person in all Texas elections. The acceptable form of photo identification may be expired up to four years. Voters who have not been able to obtain one of the forms of acceptable photo identification listed below, and have a reasonable impediment or difficulty to obtaining such identification, may present a supporting form of identification and execute a Reasonable Impediment Declaration, noting the voter's reasonable impediment to obtaining an acceptable form of photo identification, and stating that the voter is the same person on the presented supporting form of identification.

This requirement is effective immediately.

Here is a list of the acceptable forms of photo ID:

- Texas driver license issued by the Texas Department of Public Safety (DPS)
- Texas Election Identification Certificate issued by DPS
- Texas personal identification card issued by DPS
- Texas license to carry a handgun issued by DPS
- United States military identification card containing the person's photograph
- United States citizenship certificate containing the person's photograph
- United States passport

With the exception of the U.S. citizenship certificate, the identification must be current or have expired no more than 4 years before being presented for voter qualification at the polling place.

[Election Identification Certificates are available from DPS driver license offices during regular business hours.](#) [Find mobile station locations here.](#)

Here is a list of the supporting forms of ID that can be presented if the voter cannot obtain, and has a reasonable impediment or difficulty to obtaining one of the forms of acceptable photo ID:

- Valid voter registration certificate
- Certified birth certificate (must be an original)
- Copy of or original current utility bill
- Copy of or original bank statement
- Copy of or original government check
- Copy of or original paycheck
- Copy of or original government document with your name and an address (original required if it contains a photograph)

After presenting a supporting form of ID, the voter must execute a Reasonable Impediment Declaration.

Procedures for Voting

[Switch to o](#)

When a voter arrives at a polling location, the voter will be asked to present one of the seven (7) acceptable forms of photo ID that is current or expired no more than four years. If a voter has not been able to obtain one of the seven (7) acceptable forms of photo ID, and has a reasonable impediment or difficulty to obtaining an acceptable form of photo ID, the voter may present a supporting form of ID and execute a Reasonable Impediment Declaration, noting the voter's reasonable impediment to obtaining an acceptable form of photo ID, and stating that the voter is the same person on the presented form of supporting form of ID.

Election officials will still be required by State law to determine whether the voter's name on the identification provided matches the name on the official list of registered voters ("OLRV"). After a voter presents their ID, whether it's an acceptable form of photo ID or a supporting form of ID, the election worker will compare it to the OLRV. If the name on the ID matches the name on the list of registered voters, the voter will follow the regular procedures for voting.

If the name does not match exactly but is "substantially similar" to the name on the OLRV, the voter will be permitted to vote as long as the voter signs an affidavit stating that the voter is the same person on the list of registered voters.

If a voter possesses an acceptable form of photo ID but does not have it at the polling place, the voter will still be permitted to vote provisionally. The voter will have (six) 6 days to present an acceptable form of photo identification to the county voter registrar, or fill out the natural disaster affidavit referenced in the Exemption/Exceptions section below), or the voter's ballot will be rejected.

Exemption/Exceptions:

Voters with a disability who do not have an acceptable form of photo ID may also apply with the county voter registrar for a **permanent exemption**. The application must contain written documentation from either the U.S. Social Security Administration evidencing he or she has been determined to have a disability, or from the U.S. Department of Veterans Affairs evidencing a disability rating of at least 50 percent. In addition, the applicant must state that he or she has no acceptable form of photo identification. Those who obtain a disability exemption will be allowed to vote by presenting a voter registration certificate reflecting the exemption, and will not need to execute a Reasonable Impediment Declaration. Please contact your county voter registrar for more details.

Voters who have a consistent **religious objection** to being photographed and voters who do not present any form of acceptable photo identification as a result of certain natural disasters as declared by the President of the United States or the Texas Governor, may vote a provisional ballot, appear at the voter registrar's office within six (6) calendar days after election day, and sign an affidavit swearing to the religious objection or natural disaster, in order for your ballot to be counted. Please contact your county voter registrar for more details.

Frequently Asked Questions

1. What kind of photo identification is required to qualify to vote in person??

- The following is a list of acceptable photo IDs at the polling place: Texas driver license issued by the Texas Department of Public Safety (DPS)
- Texas Election Identification Certificate issued by DPS
- Texas personal identification card issued by DPS
- Texas license to carry a handgun issued by DPS
- United States military identification card containing the person's photograph
- United States citizenship certificate containing the person's photograph
- United States passport

2. My acceptable photo ID is expired. Will it still work?

With the exception of the U.S. citizenship certificate, the acceptable photo identification must be current or have expired no more than 4 years before being presented for voter qualification at the polling place.

3. What if a voter does not have any of the acceptable forms of photo ID?

If a voter cannot obtain an acceptable form of photo ID, and the voter has a reasonable impediment or difficulty to obtaining such ID, the voter may still cast a regular ballot by presenting a supporting form of ID and executing a Reasonable Impediment Declaration, noting the voter's reasonable

impediment to obtaining an acceptable form of photo ID, and stating that the voter is the same person as the person on the presented form of supporting form of ID.

Here is a list of supporting forms of ID:

- Valid voter registration certificate
- Certified birth certificate (must be an original)
- Copy of or original current utility bill
- Copy of or original bank statement
- Copy of or original government check
- Copy of or original paycheck
- Copy of or original government document with your name and an address (original required if it contains a photograph)

A **permanent exemption** is available for voters with documented disabilities who have not obtained one of the acceptable forms of photo ID. Voters with a disability may apply with the county voter registrar for a permanent exemption. The application must contain written documentation from either the U.S. Social Security Administration evidencing the applicant's disability, or from the U.S. Department of Veterans Affairs evidencing a disability rating of at least 50 percent. In addition, the applicant must state that he or she has no valid form of acceptable photo ID. Those who obtain a disability exemption will be allowed to vote by presenting a voter registration certificate reflecting the exemption.

If a voter (a) does not have one of the acceptable forms of photo identification listed above, which is not expired for more than four years, and a voter does not have a reasonable impediment to obtaining one of these forms of identification or (b) has, but did not bring to the polling place, one of the seven forms of acceptable photo identification listed above, which is not expired for more than four years, the voter may cast a provisional ballot at the polls. However, in order to have the provisional ballot counted, the voter will be required to visit the voter registrar's office within six calendar days of the date of the election to either present one of the above forms of photo ID OR submit one of the temporary affidavits addressed below (e.g., religious objection or natural disaster) in the presence of the county voter registrar while attesting to the fact that he or she does not have any of the required photo IDs.

Affidavits are available for voters who have a consistent religious objection to being photographed and for voters who do not present a form of acceptable photo identification as a result of certain natural disasters as declared by the President of the United States or the Texas Governor within 45 days of the day the ballot was cast.

4. What is a reasonable impediment?

Reasonable impediments include lack of transportation, disability or illness, lack of birth certificate or other documents needed to obtain acceptable photo ID, work schedule, family responsibilities, lost or stolen photo ID, or photo ID applied for but not received. You may also describe another reasonable impediment you have on the Reasonable Impediment Declaration form.

5. What if a voter does not have any form of ID with them at the polling place and they do not have a disability exemption?

If a voter has not obtained an acceptable form of photo ID, and does not have or does not bring a supporting form of ID to present in connection with a Reasonable Impediment Declaration, if the voter does not have a reasonable impediment to obtaining an acceptable form of photo ID, or if the voter has, but did not bring with them, an acceptable form of photo ID, the voter may cast a provisional ballot at the polls. However, in order to have the provisional ballot counted the voter will be required to visit the county voter registrar's office within six calendar days of the date of the election to either present an acceptable form of photo ID OR submit one of the temporary affidavits addressed above (religious objection or natural disaster) in the presence of the county voter registrar.

6. My name on my approved photo ID and/or my supporting ID document does not exactly match my name on my voter registration card. Can I still vote?

Election officials will review the ID and if a name is "substantially similar" to the name on their list of registered voters, you will still be able to vote, but you will also have to submit an affidavit stating that you are the same person on the list of registered voters.

7. What does “substantially similar” mean?

A voter’s name is considered substantially similar if one or more of the following circumstances applies:

1. The name on the ID is slightly different from one or more of the name fields on the official list of registered voters.
2. The name on the voter’s ID or on list of registered voters is a customary variation of the voter’s formal name. For example, Bill for William, or Beto for Alberto.
3. The voter’s name contains an initial, middle name, or former name that is either not on the official list of registered voters or on the voter’s ID.
4. A first name, middle name, former name or initial of the voter’s name occupies a different field on the presented ID document than it does on the list of registered voters.

In considering whether a name is substantially similar, election officials will also look at whether information on the presented ID matches elements of the voter’s information on the official list of registered voters such as the voter’s residence address or date of birth.

8. Is there any change in the process for voting by mail?

There is no change in the process for voting by mail for most voters. Specifically, there is no change in procedure for voters who are voting by mail after their first time voting by mail, and for first time voters who would otherwise not be required to present identification under the federal Help America Vote Act in order to vote by mail.

9. Does the address on my ID have to match my address on the official list of registered voters at the time of voting in order for it to be acceptable as ID?

No. There is no address matching requirement.

10. Is the DPS Election Identification Certificate still going to be available?

Yes. The Election Identification Certificate is now available, and will be still be a form of acceptable photo ID. Information regarding how to obtain an election identification certificate can be found at www.dps.texas.gov. You may also contact DPS by telephone at (512) 424-2600 for more information.

We hope you have found this information helpful. Should you need additional information, please contact our office via telephone at 1-800-252-VOTE (8683) or [email us](mailto:).

EXHIBIT

3



TEXAS SECRETARY OF STATE
CARLOS H. CASCOS

The Office of the Secretary of State is in the process of updating its websites to reflect a court order issued on August 10, 2016, relating to identification requirements for voting

More about [Identification Requirements for Voting](#)

Note - Navigational menus along with other non-content related elements have been removed for your convenience. Thank you for visiting us online.

Voters who cannot obtain one of the seven forms of approved photo ID have additional options at the polls

[En Español](#)

August 19, 2016

Contact: Alicia Pierce or Mari Bergman
512-463-5770

AUSTIN, TX – Today, Texas Secretary of State Carlos H. Cascos reminded Texans that voters who cannot obtain a form of approved photo ID now have additional options when voting in person. These additional options apply to current and upcoming school tax elections and the November General Election.

“Currently, Texas voters who cannot obtain one of the seven forms of approved photo ID have additional options when casting their ballots,” said Secretary Cascos. “My agency is working to make sure Texans know about these changes and that all qualified voters are ready to cast a ballot.”

As provided by court order, if a voter is not able to obtain one of the seven forms of approved photo ID, the voter may vote by (1) signing a declaration at the polls explaining why the voter is unable to obtain one of the seven forms of approved photo ID, and (2) providing one of various forms of supporting documentation.

Supporting documentation can be a certified birth certificate (must be an original), a valid voter registration certificate, a copy or original of one of the following: current utility bill, bank statement, government check, or paycheck, or other government document that shows the name and address of the voter, although government documents which include a photo must be original and cannot be copies. If a voter meets these requirements and is otherwise eligible to vote, the voter will be able to cast a regular ballot in the election.

The seven forms of approved photo ID are:

- Texas driver license issued by the Texas Department of Public Safety (DPS)
- Texas Election Identification Certificate issued by DPS
- Texas personal identification card issued by DPS
- Texas license to carry a handgun issued by DPS
- United States military identification card containing the person’s photograph
- United States citizenship certificate containing the person’s photograph
- United States passport

With the exception of the U.S. citizenship certificate, the approved photo ID must be current or have expired no more than four years before being presented for voter qualification at the polling place.

Voters with a disability may continue to apply with the county registrar for a permanent exemption to showing approved photo ID (which now may be expired no more than four years) at the polls. Also, voters who (1) have a consistent religious objections to being photographed or (2) do not present one of the seven forms of approved photo ID because of certain natural disasters as declared by the President of the United States or the Texas Governor, may continue apply for a temporary exemption to showing approved photo ID at the polls.

Voters with questions about how to cast a ballot in these elections can call 1-800-252-VOTE.

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EXHIBIT

4

Freeman, Daniel (CRT)

From: Freeman, Daniel (CRT)
Sent: Tuesday, August 30, 2016 7:52 PM
To: Colmenero, Angela; Frederick, Matthew
Cc: alltexasvoterid@dechert.com; VOTTexasID (CRT)
Subject: Voter Education and Poll Worker Training Materials

Angela and Matt,

We write concerning the State of Texas's repeated statements in voter education and poll worker training materials that only voters who "have not obtained" and "cannot obtain" SB 14 ID may vote using a Reasonable Impediment Declaration. Despite repeated objections from the United States and private plaintiffs, the State has incorporated this and similar language in numerous documents. We think that language is inaccurate and potentially misleading. Moreover, it conflicts with the Court's Interim Remedial Order (ECF No. 895), as well as the legal standard applied in *Veasey v. Abbott*, No. 14-41127, 2016 WL 3923868 (5th Cir. July 20, 2016) (en banc). We write in the hope that the State will reconsider use of this language and eliminate it from all future documents and communications with the public and election officials regarding the interim remedy.

Language limiting the availability of a Reasonable Impediment Declaration to voters who have not and "cannot obtain" SB 14 ID is currently found on VoteTexas.gov and in the Poll Watchers Guide, the Election Inspector Handbook, the Early Voting Ballot Board Handbook, the Qualifying Voters Handbook, and the Toolkit for Community Organizations and Elected Officials. For example, the homepage of VoteTexas.gov currently states, "Voters who cannot obtain one of the seven forms of approved photo ID have additional options at the polls." Similarly, the Toolkit for Community Organizations and Elected Officials entreats readers to distribute information to voters "including what approved photo ID they need to bring to the polls and what options they have if they cannot obtain an approved photo ID." The United States and the private plaintiffs have repeatedly expressed concerns regarding this language, including on August 18, 22, 23, 29, and 30.

Our concerns are rooted in the plain language of the District Court's Interim Remedial Order. That order directs the State to educate voters concerning "the opportunity for voters who do not possess SB 14 ID and cannot reasonably obtain it to cast a regular ballot." Interim Remedial Order ¶ 11. Statements that limit the availability of a Reasonable Impediment Declaration to voters who "have not obtained" and "cannot obtain" SB 14 ID improperly exclude voters who have obtained SB 14 ID in the past but no longer possess it and voters who cannot *reasonably* obtain SB 14 ID (even though, theoretically, they might be able to obtain that identification through expenditures of time or money needed to overcome substantial obstacles). The Court similarly ordered the State to use a Reasonable Impediment Declaration that instructs poll workers to allow a voter who "does not possess an acceptable form of photo identification . . . due to a reasonable impediment" to complete the Declaration and cast a regular ballot. Interim Remedial Order Ex. 1 at 1. Language narrowing the set of eligible voters to those who "have not obtained" and "cannot obtain" SB 14 ID improperly excludes some voters protected by the Court's Interim Remedial Order.

This issue is not new. In *Veasey v. Abbott*, the Fifth Circuit rejected the State's argument that only those voters who "cannot obtain" SB 14 ID are injured by voter identification requirements. Rather, the Court held SB 14 abridged the rights of individual plaintiffs who faced "excessive burdens" or "a substantial obstacle to voting because of SB 14." *Veasey v. Abbott*, 2016 WL 3923868, at *25; *see also id.* at *42 (Higginson, J., concurring) ("[I]f a Section 2 burden is cognizable only if it is impossible for some minority voters to comply with the challenged law, Justice Scalia must have mistakenly stated that Section 2 would be violated if 'a county permitted voter registration for only three hours one day a week, and that made it more difficult for blacks to register than whites.'" (quoting *Chisom v. Roemer*, 501 U.S. 380, 408 (1991) (Scalia, J., dissenting)); *Veasey v. Perry*, 71 F. Supp. 3d 627, 686 (S.D. Tex. 2014) (concluding that SB 14 violated Section 2 despite finding that "Plaintiffs have not demonstrated that any particular voter absolutely cannot get the necessary ID or vote by absentee ballot"), *aff'd in relevant part*, No. 14-41127, 2016 WL 3923868 (5th Cir. July 20, 2016)

(en banc). The Fifth Circuit notably considered the burden on an individual voter who eventually managed to procure a birth certificate necessary to obtain SB 14 ID, albeit only with the assistance of a relative traveling through his state of birth. *See Veasey v. Abbott*, 2016 WL 3923868, at *26. Communicating that Reasonable Impediment Declarations are available only to voters who “cannot obtain” SB 14 ID would therefore improperly exclude individuals harmed by a Voting Rights Act violation from the remedy on remand.

We hope that the State will reconsider using this language in voter education and training materials. We request a response to these concerns by no later than Friday, September 2, and we are available to discuss this matter at any time.

Regards,

Dan

Daniel J. Freeman
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EXHIBIT

5

Freeman, Daniel (CRT)

From: Colmenero, Angela [angela.colmenero@texasattorneygeneral.gov]
Sent: Tuesday, September 06, 2016 9:22 AM
To: Freeman, Daniel (CRT); Frederick, Matthew
Cc: alltexasvoterid@dechert.com; VOTTexasID (CRT)
Subject: RE: Voter Education and Poll Worker Training Materials
Attachments: Education and Training: Input; Re: Education and Training: Input; Ex A -MCDP News August 25, 2016.pdf; Ex B -- Reasonable Impediment Declaration executed in Denton County.pdf; VoteTexas Toolkit_Elected Official_Spanish.pdf; VoteTexas Toolkit_Community_English 9-2-16.pdf; VoteTexas Toolkit_Community_Spanish.pdf; VoteTexas Toolkit_Elected Official_English 9-2-16.pdf; Qualifying Voters Handbook (Updated September 2016).pdf; Early Voting Ballot Board Handbook 2016.pdf; Election Inspector Handbook 2016.pdf; Poll Watchers Guide 2016.pdf

Thank you for the comments to the handbooks we sent you on August 19 and the digital toolkits we sent you on August 29. We intend to send finalized versions of the handbooks to the list of election officials today and also upload that information to the SOS homepage, where the handbooks are ordinarily posted. Additionally, we intend to begin distribution of the toolkits and upload the finalized versions to the website today. We have attached the finalized versions of the handbooks and toolkits to this email, and as you will see, we included many of your proposed suggestions.

As an initial matter, we have received correspondence from the Private Plaintiffs and DOJ objecting to the State's language indicating that a voter can use a reasonable impediment declaration if they are unable to obtain a form of SB 14 ID. This language was first proposed in the "Register to Vote: Need ID? Procedures for Voting" webpage we circulated for your review on August 11. During the meet and confer process, we explained to you and the Court that we sent the draft language before it was finalized because the information contained therein would be used throughout our training materials. You were provided with an opportunity to object to the language and the State's use of "unable to obtain" or "cannot obtain." The revisions we received from you did not object to this language, but instead incorporated our language into your changes. *See* Email from J. Clark dated Aug. 12, 2016 (attached). We did not learn about your concerns until several days after this language was made public on the Secretary of State's website. *See* Email from L. Aden dated Aug. 17, 2016 (attached).

Private Plaintiffs have advocated for language suggesting that an individual who "does not have" an acceptable form of SB ID can execute a reasonable impediment declaration while DOJ proposes that the declaration should be available to individuals who "do not possess an acceptable form of ID." The State is unwilling to incorporate either proposal in the training materials that will be sent to election officials and posted on the website today. Nor is the State willing to modify information that has already been posted to the Secretary of State's website since August 12 and incorporated in press releases, training materials already distributed to the counties, and scripts for television commercials that were filmed this week.

The State chose to use the "cannot obtain" or "unable to obtain" language in its guidance because it is consistent with the language used in the Court's Interim Remedy Order. *See, e.g.,* Interim Remedy Order (ECF No. 895) at 2 ("The reasonableness of a voter's impediment to obtain SB 14 ID shall not be questioned by election officials."), 3 ("Defendants shall continue to educate voters in subsequent elections concerning both voter identification requirements and the opportunity for voters who do not possess SB 14 ID and cannot reasonably obtain it to cast a regular ballot."). The Reasonable Impediment Declaration makes clear that a person must affirm that he faces "a reasonable impediment or difficulty that prevents [him] from getting an acceptable form of photo identification." *See id.*

There are two prerequisites to demonstrating eligibility to vote using the Reasonable Impediment Declaration. Not being able to obtain a form of SB 14 ID is only one of them, so not only is the use of the word “have” or “possess” not accurate, the Private Plaintiffs’ and DOJ’s requested changes to only instruct voters that they need to meet one criterion—*i.e.*, only not “have” or “possess” a form of SB 14 ID to vote using a reasonable impediment declaration, are inaccurate because they ignore the second criterion. The existence of a reasonable impediment is the other requirement. The State’s guidance about these prerequisites must incorporate both requirements to be accurate, and we believe we have achieved that with our language. We want it to be very clear what is required when a voter comes to the polls. For this reason, we will not agree to anything that would suggest someone could vote without an ID because they left it at home.

Your objection appears to focus on the first part of the “Register to Vote: Need ID? Procedures for Voting” where the State explains that “[v]oters who have not been able to obtain one of the forms of acceptable photo identification listed below” can utilize the reasonable impediment declaration, but your concerns are addressed in the second part of the sentence (underlined below), which means exactly what you want it to say:

Voters who have not been able to obtain one of the forms of acceptable photo identification listed below and have a reasonable impediment or difficulty to obtaining such identification, may present a supporting form of identification and execute a Reasonable Impediment Declaration, noting the voter’s reasonable impediment to obtaining an acceptable form of photo identification, and stating that the voter is the same person on the presented supporting form of identification.

See <http://www.votetexas.gov/register-to-vote/need-id/> (emphasis added).

Additionally, you have expressed concerns that individuals who have lost their ID may think they don’t fall into the “cannot obtain” category and then assume they cannot vote. First, as noted above, voters who have lost their ID may in fact qualify as being “unable to obtain” an ID, but they still must also have a reasonable impediment or difficulty to obtaining a replacement ID. Numerous SOS references to “unable to obtain” follow with instructions to, or a reference to, completing the declaration and/or having a reasonable impediment or difficulty, which reflects all of the qualifications required to complete the reasonable impediment declaration. The “Qualifying Voters Handbook,” which will be distributed to all election judges, specifically states that “a voter with a lost, stolen, suspended, or expired more than four years, form of photo ID listed above could be considered to have not obtained one of the acceptable forms of photo ID for purposes of being eligible to execute a Reasonable Impediment Declaration.” See Qualifying Voters Handbook at 22. As is made clear in the handbook, the next question to the voter would be “do you have a reasonable impediment or difficulty to obtaining an acceptable form of photo ID?” The “Register to Vote: Need ID? Procedures for Voting” on the VoteTexas.gov website also includes a reference to “lost or stolen ID.” See <http://www.votetexas.gov/register-to-vote/need-id/>.

At no time has the Court or any of the parties intended the Reasonable Impediment Declaration to be a convenience document, and the State will not use language to suggest that is true in any of its voter education materials. Indeed, we have already seen the danger in suggesting that voters who “do not have” a form of SB 14 ID may execute a Reasonable Impediment Declaration in the communication sent from the Montgomery County Democratic Party Chair and a reasonable impediment declaration executed in Denton County in a tax ratification election held on August 27, 2016. See Exhibit A, Email from Montgomery County Democratic Party Chair; Exhibit B (reasonable impediment declaration executed by individual who states her reasonable impediment is that “[she] forgot her wallet”). As a result, the State will not agree to modify its current language to provide inaccurate information to voters and election officials about the purpose of the Reasonable Impediment Declaration.

We have provided an explanation below describing the reasons we rejected some of your other proposals.

Poll Watcher's Guide

In the Poll Watcher's Guide, we have declined to include your suggested language regarding stolen, lost, suspended, or expired IDs (first appearing on page 3 and then elsewhere in the guide) for the reasons stated above.

We will also not agree to include the list of examples of "other government documents" because it is unnecessary in this guide. The guide is not directed to voters or persons who will be accepting the government documents. SOS has provided a list of specific examples of "other government documents" in the Qualifying Voters Handbook that tracks the examples already provided in the training materials provided to the counties (*see* PowerPoint presentation available on VoteTexas.gov).

We are not inclined to include the proposed language on page 12 that is labeled as "Note." We believe it is redundant of the guidance provided on page 3 and do not believe there is a reason to include it again.

We will not accept your proposed language on page 15. These detailed types of explanations are more appropriate for the Qualifying Voters Handbook.

Early Voting Ballot Board Handbook

We will not modify the language in the handbook using the "has not been able to obtain" phrase to include your suggested language regarding stolen, lost, suspended, or expired IDs for the reasons provided above.

We will also not agree to include the list of examples of "other government documents" because it is unnecessary for the intended audience. This handbook is not directed to voters or persons who will be accepting the government documents. SOS has provided a list of specific examples of "other government documents" in the Qualifying Voters Handbook that tracks the examples already provided in the training materials provided to the counties.

Election Inspector Handbook

We will not agree to include the proposed language discussing the notice to provisional voters. The point of the notice is to provide the voter with what they need to do to cure the provisional ballot. Your language discussing supporting IDs on here as it relates to the reasonable impediment declaration is confusing because it suggests to the voters that they can bring a supporting ID in order to cure the provisional ballot. Because a voter cannot use a supporting ID to cure a provisional ballot, there is no reason to include your language.

We will not agree to include your list of "other government documents" for the reasons explained above.

We will not agree to include the "Note" you have proposed in response to Question No. 5 on page 9. We do not believe it is necessary and see it as another attempt to introduce language we have previously rejected.

Qualifying Voters Handbook

- *Response to DOJ Comments*
 - The State will not modify the use of the word "obtain" on pages 13-14 and 18 for the reasons discussed above. Lost, stolen, suspended, or expired more than four years IDs are covered

on page 15 as part of the explanation of the meaning of not able to obtain an acceptable form of photo ID.

- As to the comment on page 18, we disagree that “the Handbook appears to place the onus on the voter to ask for a reasonable impediment declaration.” In fact, the step-by-step instructions in the handbook include a question to the voter who has not obtained an acceptable form of photo ID as to whether the voter has a reasonable impediment or difficulty. *See* Qualifying Voters Handbook at 14, at b. (“If the voter states that they have not obtained an acceptable form of photo ID, the poll worker should ask the voter if they have a reasonable impediment or difficulty in obtaining an acceptable form of photo ID”). That said, we have decided to include a more specific description of that process and have accepted the edit which relates to the asking of a question to the voter, but mirrored the language to that on page 14 at b. as to the remainder. Accordingly, the first paragraph on page 18 reads as follows: “The voter states that they have not obtained an acceptable form of photo identification listed on page 13, and the voter is asked if they have a reasonable impediment or difficulty in obtaining an acceptable form of photo ID, and states that they do have a reasonable impediment or difficulty to obtaining an acceptable form of photo ID. [Docket No. 895].”

- *Response to Private Plaintiffs Comments*

- We accepted the addition of the reference to <http://www.votetexas.gov> on the first page of the handbook.
- We will not accept the proposed language at the bottom of page 11. Because there is no other mention of specific irregularities noticed by the poll watcher in this section, mentioning the reasonable impediment declaration here seems out of place and out of context.
- We will not agree to accept the following language suggested by the Private Plaintiffs’ in various places: “The purpose of the reasonable impediment declaration is not to trap unwary citizens who wish to cast their ballots into mistakenly filling out a sworn statement, but rather to give people who in good faith believe they do not have SB 14 ID an opportunity to vote.” We do not agree that declarations under penalty of perjury on their face, are to be signed lightly, or that the seriousness of executing a false statement should be dismissed.
- We will not accept the addition of “such ID was subsequently stolen, lost, suspended, or expired by more than four years” as an alternative to not been able to obtain. As noted above, elsewhere in the document there is language which includes stolen, lost, suspended, or expired by more than four years IDs as situations in which a voter may be unable to obtain an acceptable form of photo ID.
- We rejected your language in the change on page 13: “If a voter indicates that the voter does not have with them...” but moved up example a. above the bolded language, since that dealt with a situation in which a voter had obtained an acceptable form of photo ID. The section now looks like this:

If the voter states that they have obtained an acceptable form of photo ID, but they did not bring it to the polling place, the election officer should explain that the voter may take one of two actions:

- a. The voter may leave the polling place and return with their acceptable form of photo ID.
- b. The voter may cast a provisional ballot, and “cure” by appearing at the county voter registrar’s office within 6 calendar days of election day and presenting an acceptable form of photo ID, or completing a natural disaster

affidavit because the voter's acceptable photo ID is inaccessible due to certain natural disasters. The presiding judge will follow the procedure prescribed in Situation 7.

If a voter indicates that the voter has not been able to obtain an acceptable form of photo ID, the election officer will need to follow the guidelines below depending on the situation:

If the voter states that they have not obtained an acceptable form of photo ID...

- On page 14, we did not accept the deletion of “of the voter” after “forms of supporting ID,” to the extent Plaintiffs are making any suggestion that the voter could present someone else's utility bill or other supporting document and vote with a Reasonable Impediment Declaration.
- On pages 15 and 19, we rejected Plaintiffs' additional examples of government documents, which were beyond those listed in the PowerPoint presentation posted on SOS's website. We also are not inclined to list your examples because they are confusing. For instance, social security cards would not be accepted because they don't contain addresses. Public college or university IDs probably would not be accepted because we are not aware of any with a student's address on it. We believe that giving the examples similar to those in the PowerPoint Presentation posted online is sufficient.
- On pages 15 and 19, we reject Plaintiffs' change relating to the address on the government document not needing to match. It is confusing and underinclusive. The address on any of the supporting IDs or, for that matter, the acceptable 7 photo IDs doesn't have to match. Also, as noted above, the lack of address matching is covered at the bottom of page 16. Instead of accepting the change on page 15, we added words to the note on page 16 such that it is clear the address does not need to match on either a supporting form or an acceptable form of photo ID. “**NOTE:** The address on an acceptable form of ID or a supporting form of ID does not have to match the address on the list of registered voters.”
- We accepted Plaintiffs' edit on page 15 that added into the example related to lack of transportation a reference to “challenge how the voter came to the polling site,” but fixed the grammar in the rest of the sentence to account for this addition. It now reads: “The election officer may not question the reasonableness of the voter's reasonable impediment or difficulty or the truth of the declaration. For example, if the voter checks “lack of transportation”, the election officer may not challenge how the voter came to the polling site, or the voter's access to a bus route or other means of transportation.”
- We will agree to outline the concept that voters who would otherwise have a reasonable impediment or difficulty to obtaining an acceptable form of photo ID, but just did not bring a supporting form of ID to the polling place, may come back during early voting or election day and vote a regular ballot at the polling place if they bring back an acceptable form of supporting identification and execute the Reasonable Impediment Declaration.
- On page 15, we edited the Note relating to those who did not bring a supporting form of ID with them to the polls as follows:

NOTE: A voter who would otherwise have a reasonable impediment or difficulty to obtaining an acceptable form of photo ID but just did not bring a form of supporting ID to the polling place may opt to leave the polling place, and return at a later time with their acceptable form of supporting ID and vote a regular ballot after executing a Reasonable Impediment Declaration. However, a voter who would otherwise have a reasonable impediment or

difficulty to obtaining an acceptable form of photo ID who did not bring a supporting form of ID to the polling place may **not** “cure” at the county voter registrar’s office by showing an acceptable form of supporting ID and executing a reasonable impediment declaration at the county voter registrar’s office. For voters who vote in person at the polling place, the Reasonable Impediment Declaration process is an election day/early voting procedure only, and there is no “cure” option involving the execution of a reasonable impediment declaration or the presentation of supporting ID at the county voter registrar’s office.

- o Page 26 (relating to who may vote a provisional ballot) has been revised to read:

A voter who has not obtained an acceptable form of photo ID, and does not have a reasonable impediment or difficulty to obtaining an acceptable form of photo ID (including if the voter did not provide a form of supporting ID in connection with a Reasonable Impediment Declaration). **NOTE:** A voter who would otherwise have a reasonable impediment or difficulty to obtaining an acceptable form of photo ID but just did not bring a form of supporting ID to the polling place may opt to leave the polling place, and return at a later time with their acceptable form of supporting ID and vote a regular ballot after executing a Reasonable Impediment Declaration.

- o For consistency, we added a similar note to the poll watcher’s guide (because that guide also mentioned that the voter who did not bring their acceptable form of photo ID could bring back the ID and vote). The note on page 14 of the Poll Watcher’s Guide now reads as follows:

NOTE: If a voter has an acceptable form of photo ID but does have it with them at the polling place and there is enough time left when polls are open, the voter may choose to return at a later time with an acceptable form of photo ID, or the voter may vote provisionally. A voter who would otherwise have a reasonable impediment or difficulty to obtaining an acceptable form of photo ID but just did not bring a form of supporting ID to the polling place may also opt to leave the polling place, and return at a later time with their acceptable form of supporting ID and vote a regular ballot after executing a Reasonable Impediment Declaration.

Digital Toolkits

We reject all deletions of the words “cannot obtain” which attempt to replace the phrase with “does not possess” for the reasons set forth above. We will agree to add in “and have a reasonable impediment or difficulty to obtaining” where that language was not previously included.

We will replace the language in the constituent email to state that a voter “may vote by signing a declaration at the polls explaining the reasonable impediment or difficulty that the voter has to obtaining one of the seven forms of approved photo ID.” This change incorporates your proposed suggestion.

We will not agree to include your list of “other government documents” for the reasons explained above.

We will not agree to emphasize “an” before “an address” when discussing a government document. It is under-inclusive and non-matching is not new. We have added a note stating that addresses do not have to

match on either an acceptable form of photo ID or a supporting form of ID (not just a government document) on the constituent email. We will not add it to the press release on the first page of the toolkit because it is not a new requirement and it clutters those pages.

Their edits to the last Instagram caption are underinclusive (because they ignore the exemptions), and they also make it too long and don't refer to the Reasonable Impediment Declaration. We have incorporated some of their edits and it now reads as follows:

There are seven approved forms of photo ID in Texas – a Texas driver license, a Texas Election Identification Certificate, a Texas personal identification card, a Texas license to carry a handgun, a US military photo ID card, a US citizenship certificate containing a photo or a United States passport. Voters who have not obtained an approved photo ID and have a reasonable impediment or difficulty to obtaining one have additional options, including the ability to fill out a declaration at the polls explaining why they are unable to obtain approved photo ID together with presenting a supporting document, like a current utility bill or bank statement. Learn more about ID requirements at www.VoteTexas.gov #VoteTexas

We have accepted the singular of “religious objection” instead of “religious objections.”

Thanks,
Angela

Angela V. Colmenero
Chief, General Litigation Division
Office of the Attorney General
512.475.4100 (direct)

From: Freeman, Daniel (CRT) [mailto:Daniel.Freeman@usdoj.gov]
Sent: Tuesday, August 30, 2016 6:52 PM
To: Colmenero, Angela <angela.colmenero@texasattorneygeneral.gov>; Frederick, Matthew <matthew.frederick@texasattorneygeneral.gov>
Cc: alltexasvoterid@dechert.com; VOTTexasID (CRT) <VOTTexasID@usdoj.gov>
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Handbook, the Early Voting Ballot Board Handbook, the Qualifying Voters Handbook, and the Toolkit for Community Organizations and Elected Officials. For example, the homepage of VoteTexas.gov currently states, “Voters who cannot obtain one of the seven forms of approved photo ID have additional options at the polls.” Similarly, the Toolkit for Community Organizations and Elected Officials entreats readers to distribute information to voters “including what approved photo ID they need to bring to the polls and what options they have if they cannot obtain an approved photo ID.” The United States and the private plaintiffs have repeatedly expressed concerns regarding this language, including on August 18, 22, 23, 29, and 30.

Our concerns are rooted in the plain language of the District Court’s Interim Remedial Order. That order directs the State to educate voters concerning “the opportunity for voters who do not possess SB 14 ID and cannot reasonably obtain it to cast a regular ballot.” Interim Remedial Order ¶ 11. Statements that limit the availability of a Reasonable Impediment Declaration to voters who “have not obtained” and “cannot obtain” SB 14 ID improperly exclude voters who have obtained SB 14 ID in the past but no longer possess it and voters who cannot *reasonably* obtain SB 14 ID (even though, theoretically, they might be able to obtain that identification through expenditures of time or money needed to overcome substantial obstacles). The Court similarly ordered the State to use a Reasonable Impediment Declaration that instructs poll workers to allow a voter who “does not possess an acceptable form of photo identification . . . due to a reasonable impediment” to complete the Declaration and cast a regular ballot. Interim Remedial Order Ex. 1 at 1. Language narrowing the set of eligible voters to those who “have not obtained” and “cannot obtain” SB 14 ID improperly excludes some voters protected by the Court’s Interim Remedial Order.

This issue is not new. In *Veasey v. Abbott*, the Fifth Circuit rejected the State’s argument that only those voters who “cannot obtain” SB 14 ID are injured by voter identification requirements. Rather, the Court held SB 14 abridged the rights of individual plaintiffs who faced “excessive burdens” or “a substantial obstacle to voting because of SB 14.” *Veasey v. Abbott*, 2016 WL 3923868, at *25; *see also id.* at *42 (Higginson, J., concurring) (“[I]f a Section 2 burden is cognizable only if it is impossible for some minority voters to comply with the challenged law, Justice Scalia must have mistakenly stated that Section 2 would be violated if ‘a county permitted voter registration for only three hours one day a week, and that made it more difficult for blacks to register than whites.’” (quoting *Chisom v. Roemer*, 501 U.S. 380, 408 (1991) (Scalia, J., dissenting))); *Veasey v. Perry*, 71 F. Supp. 3d 627, 686 (S.D. Tex. 2014) (concluding that SB 14 violated Section 2 despite finding that “Plaintiffs have not demonstrated that any particular voter absolutely cannot get the necessary ID or vote by absentee ballot”), *aff’d in relevant part*, No. 14-41127, 2016 WL 3923868 (5th Cir. July 20, 2016) (en banc). The Fifth Circuit notably considered the burden on an individual voter who eventually managed to procure a birth certificate necessary to obtain SB 14 ID, albeit only with the assistance of a relative traveling through his state of birth. *See Veasey v. Abbott*, 2016 WL 3923868, at *26. Communicating that Reasonable Impediment Declarations are available only to voters who “cannot obtain” SB 14 ID would therefore improperly exclude individuals harmed by a Voting Rights Act violation from the remedy on remand.

We hope that the State will reconsider using this language in voter education and training materials. We request a response to these concerns by no later than Friday, September 2, and we are available to discuss this matter at any time.

Regards,

Dan

Daniel J. Freeman

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950 Pennsylvania Ave. NW
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EXHIBIT

6

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,

Plaintiffs,

v.

GREG ABBOTT, *et al.*,

Defendants.

Civil Action No. 2:13-cv-193 (NGR)

UNITED STATES OF AMERICA,

Plaintiff,

TEXAS LEAGUE OF YOUNG VOTERS
EDUCATION FUND, *et al.*,

Plaintiff-Intervenors,

TEXAS ASSOCIATION OF HISPANIC
COUNTY JUDGES AND COUNTY
COMMISSIONERS, *et al.*,

Plaintiff-Intervenors,

v.

STATE OF TEXAS, *et al.*,

Defendants.

Civil Action No. 2:13-cv-263 (NGR)

TEXAS STATE CONFERENCE OF NAACP
BRANCHES, *et al.*,

Plaintiffs,

v.

CARLOS CASCOS, *et al.*,

Defendants.

Civil Action No. 2:13-cv-291 (NGR)

LENARD TAYLOR, *et al.*,

Plaintiffs,

v.

STATE OF TEXAS, *et al.*,

Defendants

Civil Action No. 2:13-cv-348 (NGR)

[PROPOSED] ORDER

Having reviewed the United States' Motion to Enforce the Remedial Order (ECF No. _____), the motion is hereby **GRANTED**. Defendants shall conform all voter education and poll worker training documents to the standards articulated in the Remedial Order (ECF No. 895). Specifically, Defendants shall include language stating that all voters who do not possess SB 14 ID and cannot reasonably obtain it may cast a regular ballot after signing a reasonable impediment declaration and presenting identification of the type listed on the declaration. Defendants shall not include language limiting access to reasonable impediment declarations to voters who have not obtained and cannot obtain SB 14 ID. Specifically, Defendants shall comply with the Remedial Order in the following specific respects:

- Update and redistribute all electronic resources to reflect that all voters who do not possess SB 14 ID and have a reasonable impediment to obtaining such identification may cast a regular ballot using a reasonable impediment declaration, including VoteTexas.gov and the Toolkit for Community Organizations and Elected Officials.
- Issue corrections to past press releases and other public statements by the State of Texas, the Secretary of State, counsel for the State, and other state officials that improperly restrict the availability of a reasonable impediment declaration and incorporate such corrections in electronic archives.
- Correct all voter education and poll worker training materials that have not yet been printed to reflect the text of the Remedial Order.
- Print and distribute corrections to accompany voter education and poll worker training materials that already have been printed with inaccurate descriptions of the Remedial Order.
- Ensure that all future print, radio, and television advertisements accurately reflect the text of the Remedial Order.
- Cease any further communications that inaccurately reflect the availability of a reasonable impediment declaration under the Remedial Order.

SO ORDERED.

Date:

NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE