IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 14-41126
USDC No. 2:13-cv-00193

In re: State of Texas, Rick Perry in his Official Capacity as Governor of Texas, John Steen in his Official Capacity as Texas Secretary of State, Steve McGraw,

Petitioners,

Petition for a Writ of Mandamus to the
Southern District of Texas, Corpus Christi

TAYLOR RESPONDENTS' RESPONSE TO EMERGENCY APPLICATION TO STAY FINAL JUDGMENT PENDING APPEAL

As ORDERED by this Court on October 11, 2014, Lenard Taylor, Eulalio Mendez, Jr., Lionel Estrada, Estela Garcia Espinoza, Margarito Martinez Lara, Maximina Martinez Lara, and *La Union Del Pueblo Entero* (LUPE), Plaintiff-Respondents and Appellees ("Taylor Respondents" formerly known as the "Ortiz Plaintiffs" in the District Court) file this response to the Petitioner's Emergency Application for a Writ of Mandamus which has been construed by this Court as an Emergency Application to Stay Final Judgment Pending Appeal.

COMPLAINTS REGARDING REMEDY MERITLESS

Petitioners raise multiple complaints about the district court's remedy, none having any merit.

First, Petitioners complain that the injunction against SB 14 indicates that the constitutional right to vote and poll tax claims were facial claims. But the district court made it clear that the injunction against the entirety of the photo ID provisions of SB 14 was based on its findings of racially discriminatory purpose and racially discriminatory result, both of which are facial challenges to the entire statute. The ordinary remedy in an as-applied challenge is enjoining enforcement as to the disfavored class while allowing enforcement against the favored class.[1] The district court's order implied as much by pointing out that the broader remedy was the result of its holdings as to the discriminatory purpose and Section 2 claims, and that it therefore need not at this time consider the precise contours of a remedy suitable for only the as-applied claims. *See* Dist. Ct. Op. at 142–43.

Second, Petitioners complain about comments in the district court's opinion regarding the State's need to seek review of ameliorative changes that might solve some of the problems with SB 14. But these comments are not reflected in the district court's order that is the subject of the application for stay and appellate

[1] That ordinary rule is likely inapplicable in voting cases because of the constitutional requirement of treating all voters equally.

review. In any event, it is obvious that any ameliorative attempt by the State to resurrect SB 14—for example, by eliminating the birth certificate fee—should be reviewed by the district court in order for the district court to modify the injunction, if appropriate.

Third, Petitioners complain that the district court should not have enjoined Section 20 of SB 14, which creates the Election Identification Certificate (EIC). However, Section 20 was shown by extensive proof at trial to be an open door to unfettered discretion by the Department of Public Safety (DPS is a law enforcement agency) to grant or deny EICs with no discernable standards. Dist. Ct. Op. at 78–79. This, plus the fact the EICs are unnecessary under the district court's injunction, amply supports the remedy.

Fourth, Petitioners complain that the district court's injunction cannot apply to non-party plaintiffs or defendants. As for non-party plaintiffs, the intentional discrimination and Section 2 claims are facial challenges, so the district court was well within its discretion to provide a facial remedy that "reach[es] beyond the particular circumstances of these plaintiffs." *John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010).[2] As for non-party defendants, injunctions bind not just the parties

[2] Because the injuries suffered by the elected official plaintiffs cannot be remedied except by an injunction that applies to all members of the SB 14 disfavored class, it is likely that relief for the as applied challenges would have to extend beyond the named plaintiffs as well.

but also all those "who are in active concert or participation with" the parties. Fed. R. Civ. P. 65(d)(2).

RECORD FULL OF EVIDENCE OF DISENFRANCHISEMENT

Petitioners allege there is no "evidence that anyone is unable to vote on account of SB 14" (p 10), that "SB 14 will not prevent a single one of the 17 voters who testified at trial from voting" (p 9), and that plaintiffs "failed to produce a single individual unable to vote on account of SB 14." (p 17); Pet. Mand. also pgs. 2, 16, 25, 39. These contentions are at best misleading.

Undisputed testimony at trial proved the individual Taylor Plaintiffs themselves were disenfranchised. Petitioners do not dispute that Plaintiffs Lionel Estrada, Estela Espinoza, Lenard Taylor, Eulalio Mendez, and Margarito Lara were registered to vote and had voted in the past. Petitioners also do not dispute that each lacks the photo identification required by SB 14 ("SB 14 ID") to vote in person. Pet. Mand. App. B; (2:13-cv-00193, Doc. 610, ¶¶ 983-987). Thus, SB 14 is a barrier that has prevented these plaintiffs and hundreds of thousands of others from voting in person or voting at all.

Petitioners next attempt to misinform this Court regarding what it will take for plaintiffs and others like them to be able to vote. For example, Petitioners claim that Lenard Taylor has sufficient documentation to obtain an EIC to be able

to vote, while he testified at trial that this was not the case and no contradictory evidence was presented. (2:13-cv-00193, Doc. 610, ¶983; Trial Date 9/14/14, Pages 145-151). With regard to Estela Garcia Espinoza, Petitioners concede that she needs to amend her birth certificate at a cost of $15 before getting an EIC, but falsely or mistakenly assert that upon making a trip to a government office and providing payment for the amendment, she would then have the documents required to obtain an EIC. However, the record shows that she in fact would need to obtain a copy of her marriage certificate as well which she does not have. (2:13-cv-00193, Doc. 610, ¶985) The bottom line is that these plaintiffs had the documentation to vote before SB 14 went into effect, and now to vote the same way they always have, the State wants them to pay more, travel more, and spend more time.

Further, Petitioners completely ignore that Plaintiff Maximina Lara will be unable to renew her driver license next year when it expires without first applying for and obtaining a delayed birth certificate for another fee, and for which she lacks the underlying documents to obtain. (2:13-cv-00193, Doc. 610, ¶988) Similarly, Petitioners allege that the local registrar would assist Mr. Lara complete an application for a delayed birth certificate (also having a fee) which he would need to obtain an EIC, despite the fact that there is no evidence in the record that this is true. (2:13-cv-00193, Doc. 610, ¶987; Trial Date 9/22/14, Page 77.)

Additionally, Petitioners cavalierly disregard a citizen's right to vote in person. They would have this Court ignore the important differences and advantages between in-person voting and voting by mail, sounding like the all too familiar rationalization for racial segregation known as "separate but equal." Uncontroverted testimony taken during trial demonstrated the rational reasons many voters prefer to vote in person. *See* Dist. Ct. Op. at 107-111. While some voters do not trust the mail with their ballots, others prefer to wait until election day before making their decision. Moreover, Mr. Estrada is ineligible to vote by mail and Mr. Taylor was ineligible to vote by mail at the time this lawsuit was filed after at least one election had occurred (he has since turned 65). (2:13-cv-00193, Doc. 610, ¶983-4)

CONFUSED IMPLEMENTATION OF SB 14

SB 14 has been in effect for 15 months. While Petitioners feign concern regarding voter confusion, the district court found that the state has made no effort to educate voters about SB 14's requirements or how to comply with them. Dist. Ct. Op. at 31, 91 n.398. As for election official confusion, the district court's findings clearly illustrate that implementation of the law has been a train-wreck. *See, e.g.*, Dist. Ct. Op. at 31, 68–70.

By the same token, the trial record here shows that both voters and elections officials are likely to be more familiar with the logical pre-SB 14 requirements than with the maze created by SB 14. County elections officials have declared that it would be easier to conduct the upcoming election under the old requirements than under SB 14.

WHEREFORE, Taylor Respondents respectfully request that Petitioner's Emergency Application to Stay Final Judgment Pending Appeal be denied.

Date: October 12, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that on this the 12th day of October 2014, I submitted this document for filing by email as directed by the clerk and copying all counsel of record, or electronically using the CM/ECF system which will send notification of such filing to all counsel of record who have registered with this Court's ECF system. Counsel further certifies that: (1) required privacy redactions have been made, 5th Cir. R. 25.2.13; (2) the electronic submission is an exact copy of the paper document, 5th Cir. R. 25.2.1; and (3) the document has been scanned with the most recent version of Sophos and is free of viruses.

/s/ Robert W. Doggett