No. 14-41127
In the United States Court of Appeals for the Fifth Circuit

MARC VEASEY; JANE HAMILTON; SERGIO DELEON; FLOYD CARRIER; ANNA BURNS; MICHAEL MONTEZ; PENNY POPE; OSCAR ORTIZ; KOBY OZIAS; LEAGUE OF UNITED LATIN AMERICAN CITIZENS; JOHN MELLOR-CRUMLEY, *Plaintiffs-Appellees*
TEXAS ASSOCIATION OF HISPANIC COUNTY JUDGES AND COUNTY COMMISSIONERS, *Intervenor Plaintiffs-Appellees*
v.
GREG ABBOTT, in his Official Capacity as Governor of Texas; TEXAS SECRETARY OF STATE; STATE OF TEXAS; STEVE MCCRAW, in his Official Capacity as Director of the Texas Department of Public Safety, *Defendants-Appellants*

UNITED STATES OF AMERICA, *Plaintiff-Appellee*, TEXAS LEAGUE OF YOUNG VOTERS EDUCATION FUND; IMANI CLARK, *Intervenor Plaintiffs-Appellees*
v.
STATE OF TEXAS; TEXAS SECRETARY OF STATE; STEVE MCCRAW, in his Official Capacity as Director of the Texas Department of Public Safety, *Defendants-Appellants*

TEXAS STATE CONFERENCE OF NAACP BRANCHES; MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES, *Plaintiffs-Appellees*
v.
TEXAS SECRETARY OF STATE; STEVE MCCRAW, in his Official Capacity as Director of the Texas Department of Public Safety, *Defendants-Appellants*

LENARD TAYLOR; EULALIO MENDEZ, JR.; LIONEL ESTRADA; ESTELA GARCIA ESPINOSA; MARGARITO MARTINEZ LARA; MAXIMINA MARTINEZ LARA; LA UNION DEL PUEBLO ENTERO, INCORPORATED, *Plaintiffs-Appellees*
v.
STATE OF TEXAS; TEXAS SECRETARY OF STATE; STEVE MCCRAW, in his Official Capacity as Director of the Texas Department of Public Safety, *Defendants-Appellants*

On Appeal from the U.S. District Court for the
Southern District of Texas, Corpus Christi Division

BRIEF OF *AMICI CURIAE* CURRENT AND FORMER TEXAS ELECTION ADMINISTRATORS MARK WHITE, DANA DEBEAUVOIR, OSCAR VILLARREAL, and CAROLYN GUIDRY

Counsel listed on inside cover

Martin J. Siegel
LAW OFFICES OF
MARTIN J. SIEGEL, P.C.
Bank of America Center
700 Louisiana Street, Suite 2300
Houston, Texas 77002
Telephone: (713) 226-8566

ATTORNEY FOR *AMICI CURIAE*

SUPPLEMENTAL CERTIFICATE
OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities, as described in 5th Circuit Rule 28.2.1, have an interest in the outcome of this case. This representation, supplemental to that of the parties, is made in order that the Judges of this Court may evaluate possible disqualification or recusal.

1. Mark White, Dana DeBeauvoir, Oscar Villarreal, Carolyn Guidry, *Amici Curiae*

2. Martin J. Siegel, Law Offices of Martin J. Siegel, P.C., Attorney for *Amici Curiae*

Martin J. Siegel */s/*
Martin J. Siegel
Attorney for *Amici Curiae*

TABLE OF CONTENTS

SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

AMICI'S STATEMENT OF IDENTITY AND INTEREST 1

INTRODUCTION 2

ARGUMENT 3

I. SB 14 Forces Many Poor and Minority Voters to Pay Fees to the State in Order to Vote 3

II. SB 14 Violates the Twenty-fourth and Fourteenth Amendments 10

A. The Twenty-fourth Amendment and the Supreme Court Banned Poll Taxes Because the Taxes Discriminated Against Poorer and Minority Voters 10

B. SB 14 Impermissibly Makes Voter Affluence an Electoral Standard and Discriminates Based on Race 15

C. The State's Attacks on the District Court's Poll Tax Ruling Are Without Merit 23

CONCLUSION 28

CERTIFICATE OF SERVICE 29

CERTIFICATE OF COMPLIANCE 30

TABLE OF AUTHORITIES

page:

Cases

Anderson v. Celebrezze,
460 U.S. 780 (1983) 24

Burdick v. Takushi,
504 U.S. 428 (1992) 24

Common Cause/Georgia v. Billups,
439 F. Supp. 2d 1294 (N.D. Ga. 2006) 25, 26

Crawford v. Marion County Election Bd.,
553 U.S. 181 (2008) 23, 24, 25, 26

Frank v. Walker,
773 F. 3d 783 (7th Cir. 2014) 6, 25

Gonzalez v. Arizona,
677 F.3d 383 (9th Cir. 2012),
aff'd on other grounds, 133 S. Ct. 2247 (2013) 25

Harman v. Forssenius,
380 U.S. 528 (1965) ..... *passim*

Harper v. Virginia State Bd. of Elections,
383 U.S. 663 (1966) ..... *passim*

Johnson v. City and County of Philadelphia,
665 F.3d 486 (3d Cir. 2011) 20

Reynolds v. Sims,
377 U.S. 533 (1964) 15

Texas v. Holder,
888 F. Supp. 2d 113 (D.D.C. 2012) (three-judge court),
vacated on other grounds, 133 S. Ct. 2886 (2013) 7, 18

Veasey v. Perry,
__ F. Supp. 2d __, 2014 WL 5090258
(S.D. Tex., Oct. 9, 2014) ..... *passim*

Veasey v. Perry,
135 S. Ct. 9 (2014) 18, 23, 27

United States v. Alabama,
252 F. Supp. 95 (M.D. Ala. 1966)..... 12, 21, 22

United States v. Texas,
252 F. Supp. 234 (W. D. Tex.), *aff'd* 384 U.S. 155 (1966)..... 10, 12, 14

Weinschenk v. State,
203 S.W.3d 201 (Mo. 2006)..... 12, 19, 20, 26

Constitutional and Statutory Provisions

U.S. CONST. amend. XIV ..... *passim*

U.S. CONST. amend. XXIV, § 1 ..... *passim*

Miscellaneous Authorities

Bruce Ackerman and Jennifer Nou, *Canonizing the Civil Rights Revolution: The People and the Poll Tax*,
103 N.W. U. L. REV. 63 (Winter 2009)..... 14, 18, 23

Disenfranchisement by Means of the Poll Tax,
53 HARV. L. REV. 645 (Feb. 1940)..... 11

Atiba R. Ellis, *The Cost of the Vote: Poll Taxes, Voter Identification Laws, and the Price of Democracy*,
86 DEN. U. L. REV. 1023 (2009)..... 13, 21

Brendan Friedman, *The Forgotten Amendment and Voter Identification: How the New Wave of Voter Identification Laws Violates the Twenty-fourth Amendment*, 42 HOFSTRA L. REV. 343 (Fall 2013) 2, 17, 18

Martin Luther King, Jr., *Rev. M. L. King Urges Repeal of Poll Tax*, DALLAS EXPRESS, Nov. 3, 1963, *reprinted in Voting Rights: The Poll Tax*, MARION BUTTS COLLECTION, DALLAS PUBLIC LIBRARY, *available at* dallaslibrary2.org/mbutts/assets/lessons/L9voting+rights /Marion%20Butts%20% voting%20rights (PPT).pdf 2

David Schultz and Sarah Clark, *Wealth v. Democracy: The Unfulfilled Promise of the Twenty-Fourth Amendment*, 29 QUINNIPIAC L. REV. 375 (2011)..... 11, 12

AMICI'S STATEMENT OF IDENTITY AND INTEREST

Amici are current and former administrators of elections in Texas. Mark White served as Secretary of State from 1973-77, and later as Attorney General and Governor. The Secretary of State is Texas' chief election officer, charged with assisting county election officials and ensuring compliance with election laws throughout the state. Dana DeBeauvoir is the County Clerk of Travis County, which includes Austin. She oversees elections there and has also acted as an advisor and election observer in Bosnia, Bangladesh, Kosovo, and South Africa during the first election following apartheid. Oscar Villarreal is the Elections Administrator for Webb County, which includes Laredo. He is also the county's voter registrar. Carolyn Guidry is the County Clerk for Jefferson County, which includes Beaumont. She manages all aspects of elections there.

As election administrators, *amici* are acutely interested in ensuring that voting in Texas is conducted in accordance with the United States Constitution and with the utmost fairness. They object to any rule that would condition voting on wealth or make it harder for duly registered voters to cast ballots because of their economic circumstances.[1]

---

[1] No counsel for any party authored this brief in whole or in part, and no party, party's counsel, or other person contributed money to fund its preparation or submission. All parties have consented to the filing of this brief.

INTRODUCTION

In 1963, as Texans prepared to vote on a constitutional amendment abolishing the poll tax, Martin Luther King, Jr. wrote a letter to the *Dallas Express* arguing: "The poll tax is a great evil, for it puts a price tag on freedom."[2] Although Texas voters chose not to repeal the tax, it was partially abolished the following year by the Twenty-fourth Amendment, which forbids denying or abridging the right to vote in federal elections "by reason of failure to pay any poll tax or other tax." U.S. CONST. amend. XXIV, § 1. President Lyndon Johnson applauded the new amendment, proclaiming: "There can be no one too poor to vote."[3] Two years later, the Supreme Court invalidated poll taxes in state elections because they wrongfully made "the affluence of the voter… an electoral standard." *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666 (1966).

Although the traditional poll tax vanished decades ago, it has effectively been revived for many low-income and minority voters by

---

[2] Martin Luther King, Jr., *Rev. M. L. King Urges Repeal of Poll Tax*, DALLAS EXPRESS, Nov. 3, 1963, *reprinted in Voting Rights: The Poll Tax*, MARION BUTTS COLLECTION, DALLAS PUBLIC LIBRARY at 9, *available at* dallaslibrary2.org/mbutts/assets/lessons/L9voting+rights/Marion%20Butts%20%voting%20rights (PPT).pdf.

[3] Lyndon B. Johnson, quoted in Brendan Friedman, *The Forgotten Amendment and Voter Identification: How the New Wave of Voter Identification Laws Violates the Twenty-fourth Amendment*, 42 HOFSTRA L. REV. 343 (Fall 2013).

Texas' voter ID law, SB 14. Hundreds of thousands of voters lack a driver's license or one of the few other forms of photo ID permitted under the law. Unless they happen to have a copy of their birth certificate, they have to buy one from the county government where they were born in order to apply for a special "election identification certificate," or "EIC," allowing them to vote. Extra fees to locate, issue, or amend birth certificates may also apply. These fees erect a considerable obstacle to many voters, conditioning their franchise on personal wealth despite the command of the Constitution. The district court correctly struck down SB 14 on this basis, and this Court should affirm its ruling. As Dr. King recognized, voting should never carry a price tag.

ARGUMENT

I. SB 14 Forces Many Poor and Minority Voters to Pay Fees to the State in Order to Vote

The district court found that SB 14's identification requirements burden and discriminate against voters with limited means and members of minority groups. This and all of the district court's factual findings are entitled to deference. *See* Veasey-Lulac Appellees' Brf. at 62.

SB 14 requires presentation of certain forms of photo identification at the polls, such as a driver's license, personal ID card or passport. *Veasey v. Perry*, __ F. Supp. 2d __, 2014 WL 5090258 at * 8 (S.D. Tex., Oct. 9,

2014). A voter who doesn't have one of the allowed forms of identification can get an EIC instead, but that requires providing documentation of identity and U.S. citizenship. *See id.* at ** 8, 29. "[F]or the vast majority of applicants who lack a primary form of identification, the only way to prove identity for EIC purposes is through a birth certificate." *Id*. at * 29.

Although Texas provides EICs for free, a voter who lacks an original or a copy of her birth certificate has to buy one in order to apply for an EIC. *Id*. The charge for this varies based on the voter's circumstances. If the voter was born in Texas, can travel to a DPS office in person between Monday and Friday, and only wants a version of the birth certificate useable for the EIC, the cost is $2.00 to $3.00. *See id.* at * 10. If a voter wants an all-purpose birth certificate – the only kind available by mail – the cost rises to $22.00 or $23.00. *See id.* If the voter is uncertain which county holds his birth certificate, the search fee and surcharge is $22.00. *See id*. If the voter requests issuance of a birth certificate for a previously unregistered birth (a "delayed birth certificate"), the cost is $47.00. *See id*. at ** 10, 29-30. If the voter must amend the birth certificate to correspond to her other documentation, such as proof of citizenship or voter registration, the cost is $37.00. *See id*. at ** 10, 30, 33. This could be necessary, for example, if the original certificate contains even a minor error or if the voter's name has

changed through marriage. *See id.* at * 33. If the voter must apply to government agencies outside Texas to retrieve a copy of her birth certificate, the cost ranges from $5.00 to $34.00. *See id*. at ** 10, 30-31. Attempting to prove identity through documentation other than a birth certificate is even more costly.[4]

The district court found that approximately 608,470 registered Texas voters lack identification that qualifies under SB 14 (with 534,512 of these voters ineligible for the disability exception). *See id.* at * 21. "Moreover, a disproportionate number of African-Americans and Hispanics populate that group of potentially disenfranchised voters." *Id.*

Not surprisingly, those with limited means are most likely to lack the IDs that satisfy SB 14. They are less likely to own a car or use commercial financial services, allowing them to get by without government identification. *See id*. at * 26. Thus, plaintiffs' experts testified that "21.4% of eligible voters who earn less than $20,000 per year lack a qualified SB 14 ID. That number compares to just 2.6% of eligible voters who earn between

[4] For example, fees to obtain a driver's license range from $31.00 to $72.00. *See id*. at * 10. A Texas Personal Identification Card costs $28.00 – $63.00. *See id*. A handgun license costs over $79.00, a passport over $30.00, and a citizenship certificate with a photo is $345.00 to $ 680.00. *See id*.

$100,000 and $150,000 per year. In other words, lower income Texans are over eight times more likely to lack proper SB 14 ID." *Id*. at * 25.

Along the same lines, the evidence at trial established that lower-income voters are also more likely to lack the underlying documents needed to obtain an EIC, such as a birth certificate. *See id*. Indeed, even federal judges sometimes have difficulty locating their birth certificates. *See Frank v. Walker*, 773 F. 3d 783, 796 (7th Cir. 2014) (Posner, J., dissenting from denial of rehearing en banc) ("The author of this dissenting opinion has never seen his birth certificate and does not know how he would go about 'scrounging' it up. Nor does he enjoy waiting in line at motor vehicle bureaus").

The district court found that obtaining SB 14-compliant identification or an EIC is difficult for many poorer voters. As a group, these voters "feel the burden" of having to pay even low fees for identification documents "most acutely." *Veasey,* 2014 WL 5090258 at * 26. "The concept is simple – a $20.00 bill is worth much more to a person struggling to make ends meet than to a person living in wealth." *Id*. "Some Plaintiffs testified that they were either unable to pay or that they would suffer a substantial burden in paying the cost associated with getting a qualified SB 14 ID or the necessary underlying documents." *Id*. at * 31. One witness, a retiree living on

$321.00 a month, testified that obtaining a Mississippi birth certificate cost $42.00, but that she "had to put the $42.00 where it was doing the most good. It was feeding my family, because we couldn't eat the birth certificate… so, [she] just wrote it off." *Id.* at * 26. The court found this illustrative of "how SB 14 effectively makes some poor Texans choose between purchasing their franchise or supporting their family." *Id.*

The time, effort, expense, and wages sacrificed to obtain identification documents also take a greater toll on people of lesser means. As one expert testified:

> [U]nreliable and irregular wage work and other income ... affect the cost of taking the time to locate and bring the requisite papers and identity cards, travel to a processing site, wait through the assessment, and get photo identifications. This is because most job opportunities do not include paid sick or other paid leave; taking off from work means lost income. Employed low-income Texans not already in possession of such documents will struggle to afford income loss from the unpaid time needed to get photo identification.

Id. at * 26. The three-judge court that refused to preclear SB 14 made the same point: "the burdens associated with obtaining ID will weigh most heavily on the poor." *Texas v. Holder*, 888 F. Supp. 2d 113, 124 (D.D.C. 2012) (three-judge court), *vacated on other grounds*, 133 S. Ct. 2886 (2013).

The district court specifically heard testimony from several plaintiffs who faced great difficulty and expense trying to get copies of their birth

certificates. One 77 year-old retiree had to pay a $22.00 search fee to DPS only to learn that his birth had never been registered. *See Veasey,* 2014 WL 5090258 at * 29. This required him to master "a 14-page packet of instructions and forms" and pay $47.00 more for creation of a delayed birth certificate and a certified copy. *Id*. His sister similarly owed $47.00, "which she cannot afford." *Id.* at * 30. Other witnesses testified that obtaining copies of their birth certificates from other states would entail fees ranging from $30.00 to $81.32. *Id.* at ** 30-31. The court summarized one plaintiff's expensive odyssey through the bureaucracy:

> Mr. Carrier, an 84-year-old retiree from China, Texas, was born at home and, with the help of his son, contacted three different counties trying to locate his birth certificate to no avail. He then paid DSHS $24.00 for them to conduct a search for his birth certificate. After twelve weeks, DSHS sent him a birth certificate, but it was riddled with mistakes… Mr. Carrier, again with the help of his son, submitted an application to amend his birth certificate which included a $12.00 notary fee. After some months, DSHS contacted him and requested additional documentation to execute the amendment, one of which included the same document he was attempting to obtain in the first place – a birth certificate… A week before he was to testify in this case, Mr. Carrier received his amended birth certificate. Unfortunately, the birth certificate still contains the incorrect birth date.

Id. at * 30.

Then there is the cost associated with traveling to a DPS office. The district court found that 78 counties in Texas lack a DPS office; that the

nearest office is 100-125 miles away for some border communities; and that 737,000 people would have to travel ninety minutes to the nearest DPS office, 596,000 would face a two-hour journey, and 418,000 would have a three-hour trip. *See id.* at ** 31-32. Plaintiffs' expert "further testified that the travel burden fell most heavily on poor African-Americans and Hispanics at differential rates that were statistically significant at the very highest level. The travel times would be both burdensome and unreasonable to most Texans – regardless of wealth or income." *Id.* at * 32. DPS offices are also closed on weekends, when many farm and ranch workers have their only opportunity to travel to one.

Finally, the court found that the people disadvantaged by SB 14 are more likely to be members of minority groups. *See id*. at ** 26-27. "African-Americans and Latinos are substantially more likely than Anglos to live in poverty in Texas because they continue to bear the socioeconomic effects caused by more than a century of discrimination." *Id.* at * 28. Moreover, "as confirmed by multiple methods, the persons on the No-Match List are disproportionately African-American or Hispanic. Members of those minority groups are significantly more likely to lack qualified photo ID, live in poverty (lacking the resources to get that ID), live without

vehicles for their own transportation to get to ID-issuing offices, and live substantial distances from ID-issuing offices." *Id*. at * 26.

II. SB 14 Violates the Twenty-fourth and Fourteenth Amendments

A. The Twenty-fourth Amendment and the Supreme Court Banned Poll Taxes Because the Taxes Discriminated Against Poorer and Minority Voters

Congress and the states amended the Constitution to ban use of the poll tax in federal elections in order to stamp out discrimination in voting based on wealth and race. The Supreme Court did the same in *Harper* when it outlawed the poll tax in state elections under the Fourteenth Amendment. This background is central to understanding why SB 14 runs afoul of the Constitution.

"Although frequently thought of as a tax on the privilege of voting, the poll tax is actually a head tax. In this context, 'poll' means 'head' rather than the term customarily used to describe a place of voting." *United States v. Texas*, 252 F. Supp. 234, 238 (W.D. Tex.) (three-judge court), *aff'd* 384 U.S. 155 (1966). Conditioning the franchise on prior payment of the poll tax arose in antebellum America as a substitute for the earlier English practice restricting voting to landowners. "During the Colonial period, property qualifications, usually the ownership of a freehold, were universal. The framers of the Constitution did not regard such a limitation of the electorate

as undesirable; in the period immediately following the Revolution there was no substantial enlargement of the franchise." *Disenfranchisement by Means of the Poll Tax*, 53 HARV. L. REV. 645, 646 (Feb. 1940).

Gradually, however, urbanization and industrialization made ownership of personalty an increasingly common alternative form of wealth. *See id*. Requiring voters to have paid their poll taxes therefore became a new mechanism to limit the electorate based on means, though a less restrictive one. *See id*. "The poll tax was still an effort to prevent 'undesirables,' such as the poor or foreigners, from voting. Implicit in the poll tax remained the conviction that wealth ensured independence, a sign of worthiness or perhaps blessedness, and a definite stake in the political community." David Schultz and Sarah Clark, *Wealth v. Democracy: The Unfulfilled Promise of the Twenty-Fourth Amendment*, 29 QUINNIPIAC L. REV. 375, 383 (2011). Still, the tax represented a lower barrier to suffrage than property ownership and so heralded the growing "democratization of American society." *Id*. And the tax began to vanish altogether by the Civil War, when only seven states linked payment of the poll tax to the right to cast a ballot. *See Disenfranchisement, supra,* at 647.

But Southern states resurrected the poll tax after Reconstruction as one of several ways to disenfranchise African-Americans and poor whites.

Other tactics aimed at African-Americans included violence, literacy tests, refusal to register voters, and the manipulation of polling places and ballots. *See* Schultz and Clark, *supra*, at 388. "Between 1889 and 1902, ten Southern states made the poll tax a prerequisite for voting." *United States v. Texas*, 252 F. Supp. at 243. The overall purpose was to reduce the number of voters:

> The use of poll taxes, along with literacy tests and grandfather clauses, cumulatively sought to shrink the electorate by disenfranchising blacks and poor whites. It rejected universal manhood suffrage with the hope that shrinkage of the electorate would maintain Southern Democratic Party authority. The poll tax thus was as much about wealth and class as it was about race, with the broader purpose being to depress turnout.

Schultz and Clark, *supra*, at 391.

Texas instituted the poll tax requirement by constitutional amendment in 1902. "A primary purpose of the 1902 Amendment … was the desire to disenfranchise the Negro and the poor white supporters of the Populist Party." *United States v. Texas*, 252 F. Supp. at 245; *see also, e.g., United States v. Alabama*, 252 F. Supp. 95, 99 (M.D. Ala. 1966) (three-judge court) ("The necessary effect of the [Alabama] poll tax as adopted in 1901 was to disfranchise Negro voters. The history of the poll tax leaves no doubt that this was its sole purpose"). The tax achieved its aim in Texas and throughout the South: "Voting participation by African American males

declined from ninety-eight percent in 1885 to ten percent in 1905." Atiba R. Ellis, *The Cost of the Vote: Poll Taxes, Voter Identification Laws, and the Price of Democracy*, 86 DEN. U. L. REV. 1023, 1042-43 (2009).

By the mid-twentieth century, however, attention turned to the poll tax as an anachronistic obstacle to wider political participation. "[F]ederal legislation to eliminate poll taxes, either by constitutional amendment or statute, [was] introduced in every Congress since 1939." *Harman v. Forssenius*, 380 U.S. 528, 538 (1965). The Supreme Court discussed the push for the Twenty-fourth Amendment in *Harman*: "Even though in 1962 only five States retained the poll tax as a voting requirement, Congress reflected widespread national concern with the characteristics of the tax. Disenchantment with the poll tax was manyfaceted." *Id.* at 539.

First, "[o]ne of the basic objections to the poll tax was that it exacted a price for the privilege of exercising the franchise. Congressional hearings and debates indicate a general repugnance to the disenfranchisement of the poor occasioned by failure to pay the tax." *Id*. "Another objection to the poll tax raised in the congressional hearings was that the tax usually had to be paid long before the election – at a time when political campaigns were still quiescent – which tended to eliminate from the franchise a substantial number of voters who did not plan so far ahead." *Id.* at 1185. Third, "[t]he

poll tax was also attacked as a vehicle for fraud which could be manipulated by political machines by financing block payments of the tax." *Id*. Finally, "of primary concern to many, the poll tax was viewed as a requirement adopted with an eye to the disenfranchisement of Negroes and applied in a discriminatory manner." *Id.*

"Once Congress proposed the Twenty-Fourth Amendment in August 1962, its ratification in the states was propelled forward by the rising tide of support for the civil rights movement." Bruce Ackerman and Jennifer Nou, *Canonizing the Civil Rights Revolution: The People and the Poll Tax*, 103 N.W. U. L. REV. 63, 87 (Winter 2009). The amendment became part of the Constitution in 1964, but because it only reaches federal elections, use of the poll tax remained permissible in voting for state offices. Congress therefore directed the Attorney General to bring lawsuits challenging the poll tax in state elections, and a three-judge court invalidated use of the tax in Texas in 1966. *See United States v. Texas*, 252 F. Supp. at 255-56.

Six weeks later, the Supreme Court struck down the poll tax in every state's elections: "We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax."

Harper, 383 U.S. at 666. The Court quoted the command in *Reynolds v. Sims* – "The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races" – and added:

> We say the same whether the citizen, otherwise qualified to vote, has $1.50 in his pocket or nothing at all, pays the fee or fails to pay it. The principle that denies the State the right to dilute a citizen's vote on account of his economic status or other such factors by analogy bars a system which excludes those unable to pay a fee to vote or who fail to pay.

Id. at 667-68 (quoting in part *Reynolds*, 377 U.S. 533, 568 (1964)). "Lines drawn on the basis of wealth or property," the Court observed, "like those of race, are traditionally disfavored." *Id.* at 668.

The poll tax, then, was abolished through constitutional amendment and by the Supreme Court because of "a general repugnance" toward both the disenfranchisement of poorer voters and use of the tax to achieve race-based exclusion. *Harman*, 380 U.S. at 539.

B. SB 14 Impermissibly Makes Voter Affluence an Electoral Standard and Discriminates Based on Race

The basic evils targeted by the Twenty-fourth Amendment and *Harper* reappear plainly in SB 14. For a large group of poorer people, the law effectively conditions voting on payment for identification documents. And because lower income citizens are more likely to be members of

minority groups, SB 14 discriminates on the basis of race. The district court was right to strike it down as a new version of the old, discredited poll tax.

Initially, the district court's findings establish that a substantial number of voters will have to pay a fee to the state in order to vote. Because 608,470 registered voters lack photo ID that satisfies SB 14, they will have to secure an EIC to vote. That in turn will require them to pay money to the state for a copy of their birth certificate – unless they have it already – or some other, more expensive form of identification. Some of these voters may pay only $2.00 if they were born in Texas, can manage to visit a DPS office in person, and apply for a birth certificate useable only for an EIC. *See supra* at 4. But many others will have no choice but to pay much higher fees if they were born outside Texas, if they have to search county records to find their birth certificate, if their birth wasn't registered, or if they need to amend the birth certificate to make it accurate and up-to-date. *See id*.

The only reason voters who otherwise don't want copies of their birth certificates will have to pay these sums to the state is to vote, and the only way to avoid payment is not to vote. Many voters will also lose wages, expenses, and time traveling to county offices, dealing with agencies in other states, and trying to obtain records remotely. These sums, too, will have to be expended merely to vote. Hence, SB 14 is functionally the same as the

compulsory poll tax rule abolished by the Twenty-fourth Amendment and *Harper*: it is a required payment to the state in order to vote.

True, the fee charged for a birth certificate is one step removed from the traditional poll tax in the sense that it buys a state-mandated qualification to vote rather than the vote itself. But this is a distinction without a constitutionally significant difference. The Twenty-fourth Amendment reaches beyond simply the poll taxes that existed in 1964:

> Congress and President Johnson anticipated that the Twenty-Fourth Amendment would be applied more broadly than only ending the historical tax-for-vote scheme. The Amendment was an effort to provide the franchise to people of all classes, and to eliminate the traditional tax-for-vote scheme as well as constructive poll taxes. These goals are illustrated by the congressional intent, executive intent, and the text of the Twenty-Fourth Amendment itself.

Friedman, *supra*, at 364-65.

Most importantly, the breadth of the Twenty-fourth Amendment is confirmed by its text. The amendment prevents states from denying or abridging the right to vote "by reason of failure to pay *any* poll tax *or other tax*." U.S. CONST. amend. XXIV, § 1 (emphasis added). "The words 'any' and 'other' lend support to the idea that the Twenty-Fourth Amendment's scope is not so limited [to the original poll tax] and may be used to address other forms of monetized payment… reasonably includ[ing]… payments to obtain underlying documents from the state and the time committed and

money spent maneuvering through the state bureaucracy." Friedman, *supra,* at 367. The amendment's broad language therefore encompasses fees or charges that may operate differently than poll taxes but, if not remitted to the state, preclude voting. *See* Ackerman and Nou, *supra*., at 143. "It was the very point of the Twenty-Fourth Amendment to prohibit these coercive kinds of payments." *Id*. (referring to fees for identification documents like passports). The three-judge court that declined to preclear SB 14 was correct to describe the unavoidable cost of obtaining identification under SB 14 as "an implicit fee for the privilege of casting a ballot," *Holder*, 888 F. Supp. at 140 (quoting *Harper*, 383 U.S. at 670), and three Justices have already suggested that SB 14 "likely imposes an unconstitutional poll tax." *Veasey v. Perry*, 135 S. Ct. 9, 12 (2014) (Ginsburg, J., dissenting from denial of application to vacate stay).

The Supreme Court demonstrated the breadth of the Twenty-fourth Amendment in *Harman*. The Virginia law in that case did not simply require payment of a poll tax; it allowed voters to either pay the tax or file a certificate of residence six months before the election. *See* 380 U.S. at 529. But this was recognized as little more than a device to circumvent the direct bar on the poll tax in the amendment. Even if the alternative of filing a certificate was "somewhat less onerous" than payment of the tax, Virginia's

scheme erected "a real obstacle to voting in federal elections for those who assert[ed] their constitutional exemption from the poll tax." *Id.* at 541-42. "For federal elections, the poll tax is abolished absolutely as a prerequisite to voting," the Court held, "*and no equivalent or milder substitute may be imposed*." *Id.* at 542 (emphasis added). Although they operate differently than the old, outlawed poll tax, the fees and expenses here work the same result for a large swath of the electorate and amount to "equivalent or milder substitutes," with same underlying defects. The same is true under *Harper*, as the Missouri Supreme Court recognized in striking down a voter ID law under that state's constitution:

> While requiring payment to obtain a birth certificate is not a poll tax, as was the $1.50 in *Harper*, it is a fee that qualified, eligible, registered voters who lack an approved photo ID are required to pay in order to exercise their right to free suffrage under the Missouri Constitution. *Harper* makes clear that all fees that impose financial burdens on eligible citizens' right to vote, not merely poll taxes, are impermissible under federal law.

Weinschenk v. State, 203 S.W.3d 201, 213-14 (Mo. 2006).

More generally, denying the right to vote to some people because they have not paid or cannot afford a fee for identification documents, or the lost time and wages it would take to get them, thwarts the clear and wide-ranging purpose behind the Twenty-fourth Amendment and *Harper*. The Twenty-fourth amendment ended the poll tax because "it exacted a price for the

privilege of exercising the franchise." *Id.* at 539. Or as the Court put it in *Harper*, the tax made "the affluence of the voter or payment of [a] fee an electoral standard," and "wealth… a measure of a voter's qualifications." 383 U.S. at 666, 668; *see also Johnson v. City and County of Philadelphia*, 665 F.3d 486, 496 (3d Cir. 2011) (rejecting Twenty-fourth Amendment challenge "[b]ecause there is no evidence that the City's ordinance taxed voters or otherwise made voter affluence an electoral standard").

SB 14 does the same thing. Under the Twenty-fourth Amendment, any fee – even $2.00 – is impermissible. But the district court found that many voters would face far higher charges that would force them to choose between voting and other important needs. *See supra* at 4-7. Thousands, tens of thousands, perhaps even hundreds of thousands of voters could face this dilemma. *See id*. The court also found that some voters would have to sacrifice wages and incur transportation and other costs if forced to embark on the task of locating documents like their birth certificates, making necessary changes, and obtaining copies. *See id.* at 7-9. For all these voters, affluence would necessarily serve as the standard determining their fundamental right to vote and as the factor that determines whether they actually cast ballots. *See Harper*, 383 U.S. at 666; *see also Weinschenk*, 203 S.W.3d at 214 ("For Missourians who live beneath the poverty line, the $15

they must pay in order to obtain their birth certificates and vote is $15 that they must subtract from their meager ability to feed, shelter, and clothe their families. The exercise of fundamental rights cannot be conditioned upon financial expense").

SB 14 also contradicts the intent of the Twenty-fourth Amendment's drafters to attack the racial discrimination facilitated by the tax. The district court found that minorities are greatly overrepresented among the poorer Texans likely to be hit hardest by the requirement to find and purchase birth certificates. *See supra* at 9. When the Jim Crow South revived the poll tax, the sums demanded effectively ruled out participation by most African-American voters, though the tax was facially race-neutral and therefore easier to defend than extra-legal means of disenfranchisement. *See Ellis*, *supra*, at 1041; *United States v. Alabama*, 252 F. Supp. at 98 ("A demand grew for more sophisticated means of depriving Negroes of the vote"). Here too, the law is not racially discriminatory on its face, but its impact will be felt most heavily by African-Americans and Hispanics. As the court noted when invalidating Alabama's poll tax:

> Moreover, nothing encourages arbitrary and offensive discrimination more effectively than allowing governments to pick those few upon whom the heavy hand of government will fall and thus escape the political retribution that might meet them at the polls should the majority be truly affected. Courts

> can take no better step toward preserving our heritage of liberty than to strike down such narrowly discriminatory measures.

United States v. Alabama, 252 F. Supp. at 100.

One final similarity to the poll tax bears mention. Supporters of the Twenty-fourth Amendment stressed that the tax disenfranchised some voters because it "usually had to be paid long before the election," when campaigns were inactive, leading voters to miss the deadline. *Harman*, 380 U.S. at 1185. SB 14 raises similar concerns. Many voters who lack one of the prescribed forms of identification will first have to learn of the availability of the EIC, which the district court found has not been well publicized. *See Veasey*, 2014 WL 5090258 at ** 28-29. They will then have to navigate the maze of state and county bureaucracy – perhaps including agencies in other states – in order to unearth and obtain copies of birth certificates. They will then have to apply for EICs. Travel to government offices and missing work are often necessary. To be effective, all this will have to occur months before the actual election. The district court described several cases of voters who were seriously impeded by this time-consuming, sometimes Kafkaesque process. *See id.* at ** 29-34. The Twenty-fourth Amendment

was intended to lower administrative roadblocks like these that quietly suppress the vote long before election day.[5]

In sum, the Twenty-Fourth Amendment and *Harper* condemn the facets of Texas law that extract payments and impose other costs for documents needed to vote. This Court should therefore affirm that portion of the district court's decision.

C. The State's Attacks on the District Court's Poll Tax Ruling Are Without Merit

Texas attacks the district court's decision under the Twenty-fourth Amendment and *Harper* by stressing the Supreme Court's decision in *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008). *See* Appellants' Brf., Point I(A). Yet the district court's decision is not inconsistent with *Crawford*.

First, *Crawford* did not involve a challenge under the Twenty-fourth Amendment. *See Veasey*, 135 S. Ct. at 12 (Ginsburg, J., dissenting from denial of application to vacate stay) ("The District Court further found that Senate Bill 14 operates as an unconstitutional poll tax – an issue… no[t] before the Court in *Crawford*"); Ackerman and Nou, *supra*, at 139

[5] The district court also correctly determined that the ability to vote by mail does not mitigate the constitutional violations caused by the fees at issue here. *See Veasey*, 2014 WL 5090258 at * 58. Regardless, this option is only available to voters who are disabled and over 65, *see id.*, and so does not lessen the effects of SB 14 for most voters.

("*Crawford* didn't even ask this question – let alone answer it"). Rather, the *Crawford* Court analyzed Indiana's voter ID law under the Fourteenth Amendment according to the *Anderson-Burdick* balancing test. *See* 553 U.S. at 189-91. Under the Twenty-fourth Amendment, conditioning voting on payment of any poll tax or other tax is invalid, regardless of state interests offered to justify it. Given the straightforward prohibition in the amendment's text, the invalidity of a "poll or other tax" cannot successfully be counterbalanced by rationales like the desire to address voter impersonation fraud – interests the district court found insufficient to justify the law under the *Anderson-Burdick* framework in any case. *See Veasey*, 2014 WL 5090258 at ** 46-48.

Second, the *Crawford* Court could not assess the degree to which Indiana's law burdened actual voters because the plaintiffs brought a facial challenge to the statute with little record evidence of its effects in practice. The Court therefore found that, "on the basis of the evidence in the record it is not possible to quantify either the magnitude of the burden on this narrow class of voters or the portion of the burden imposed on them that is fully justified." 553 U.S. at 200. The record in *Crawford* was silent on "the number of registered voters without photo identification," the "burden

imposed on voters who currently lack photo identification," and "the difficulties faced by… indigent voters." *Id*. at 200-01.

In this case, the district court conducted a lengthy trial and made extensive and detailed factual findings on all these subjects, often based on uncontradicted evidence. The resulting record could not be clearer on how SB 14 harms low-income voters. *See* Point I, *supra*. *Crawford* does not hold that charging fees for voting-related identification is always and forever constitutional regardless of how many people are affected and how severely their right to vote is curtailed. *See Frank*, 773 F. 3d at 796 (Posner, J., dissenting from denial of rehearing en banc) ("The decision [*Crawford*] does not resolve the present case, which involves a different statute and has a different record… It is a disservice to a court to apply its precedents to dissimilar circumstances").[6]

---

[6] Texas also cites *Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012), *aff'd on other grounds*, 133 S. Ct. 2247 (2013), which rejected an argument based on the Twenty-fourth Amendment. *See* Appellants' Brf. at 16. The opinion in *Gonzalez* contains no reasoning or analysis as to why charging voters for required documents is not a form of "poll tax or other tax," nor did it consider the fees in light of the amendment's history and purpose. *See id.* at 407-08. Its *ipse dixit* should carry little weight here. For the reasons discussed herein, the Ninth Circuit also erred by holding that *Crawford* resolved the plaintiffs' argument under *Harper* and the Fourteenth Amendment. *See id.* at 408-10.

One district court has also rejected arguments under the Twenty-fourth Amendment. *See Common Cause/Georgia v. Billups*, 439 F. Supp. 2d 1294, 1354-55 (N.D. Ga. 2006). The decision was based in part on the plaintiffs' failure, as in *Crawford*, "to show that any particular voter would actually be required to

Texas notes that Indiana also charges for birth certificates and then claims: "*Crawford* determined that this Indiana practice did not substantially burden the right to vote." Appellants' Brf. at 15. Actually, the Supreme Court made no such determination. *See* 553 U.S. at 197-203. On the contrary, it expressly noted that it could not discern the effect of the law on indigent voters in light of the sparse record created in the district court in that case. *See id.* at 201.

Texas also repeatedly stresses that the EIC is "free." *See, e.g.*, Appellants' Brf. at 15 ("As the district court noted, Texas provides free voter IDs"). But it hardly matters that the EIC is free if a voter has to pay for another document to get one. As the Missouri Supreme Court recognized: "The fact that Missouri has waived collection of costs normally charged to persons seeking a non-driver's license does not make that license 'free' if Missourians without certified copies of birth certificates or passports must still expend sums of money to obtain the license." *Weinschenk*, 203 S.W.3d at 213. The EIC is free in the way the peanuts are free on airplanes – one has to buy a ticket first.

The state points out that charges for copying, locating, amending, and issuing birth certificates are prescribed in laws and regulations other than SB

---

incur th[e] cost [for underlying identification documents] in order to vote." *Id*. Here, again, the district court found that plaintiffs have made such a showing.

14. *See* Appellants' Brf. at 15-16. But that is beside the point; SB 14 is the law that forces voters to incur these preexisting fees in order to vote.

Lastly, Texas likens the fees for birth certificates to charges for gas and stamps used to vote: "A tax on gasoline is not a 'poll tax,' even though nearly every voter must spend money for transportation to the polls. And the price of a stamp is not a 'poll tax' when a person votes by mail." Appellants' Brf. at 16. Three Justices answered this contention last fall in the litigation over whether the district court's ruling should be stayed: "Texas tells the Court that any number of incidental costs are associated with voting. But the cost at issue here is one deliberately imposed by the State." *Veasey*, 135 S. Ct. at 12 (Ginsburg, J., dissenting from denial of application to vacate stay). If Texas somehow mandated a transportation surcharge specifically on trips to the polls, or issued and charged for a special stamp voters had to use to mail in ballots, the fees likely would violate the Twenty-fourth Amendment. All the more so if the special voting-related gas or stamp tax disproportionately affected minorities and low-income voters.

CONCLUSION

President Johnson was right to recognize that no American is too poor to vote. Whenever the right to vote is made to depend on a person's wealth – whether in the form of the traditional poll tax or by some newer method – the Twenty-fourth Amendment and *Harper* have been violated. This Court should affirm the judgment of the district court invalidating SB 14 on that ground.

March 10, 2015 Respectfully Submitted,

Martin J. Siegel /s/
Martin J. Siegel
LAW OFFICES OF MARTIN J. SIEGEL, P.C.
Bank of America Center
700 Louisiana St., Suite 2300
Houston, TX 77002
Telephone: (713) 226-8566
Martin@siegelfirm.com

Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2015, the foregoing brief was electronically filed with the Clerk of Court for the U.S. Court of Appeals for the Fifth Circuit using the appellate CM/ECF system, and that counsel of record for all parties have been served by the appellate CM/ECF system.

Martin J. Siegel */s/*
Martin J. Siegel

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. Civ. P. 32(a)(7)(B) because this brief contains 6,578 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief is printed in a proportionally spaced typeface using the Microsoft Word for Mac program in 14 point, Times New Roman font in body text and 13 point, Times New Roman font in footnote text.

Martin J. Siegel */s/*
Martin J. Siegel

Dated: March 10, 2015