United States v. Texas Closing Argument
Judge Nelva Gonzales Ramos
September 22, 2014
Ryan P. Haygood
NAACP Legal Defense & Educational Fund, Inc. (LDF)

United States v. Texas Closing Argument

- Good morning, Your Honor. My name is Ryan Haygood of the NAACP Legal Defense & Educational Fund, Inc., and I, along with my colleagues here in court this morning Natasha Korgaonkar, Leah Aden, and Deuel Ross, also of LDF, as well as Danielle Conley, Kelly Dunbar, and Tania Faraanso of WilmerHale, represent Plaintiff-Intervenors (1) the Texas League of Young Voters Education Fund, a Houston-based non-profit, non-partisan organization that engages young people of color in the political process, and (2) Ms. Imani Clark, a registered Black voter and student at Prairie View A&M University, one of Texas's historically Black colleges and universities.[1]

I. Legal Standards

- Your Honor, the fundamental question before this Court is whether the State of Texas can disfranchise hundreds of thousands of voters through a racially discriminatory voting restriction that the Texas Legislature enacted, purportedly, to address a phantom problem, namely, in-person voter fraud.

[1] http://www.edonline.com/cq/hbcu/tx.htm

- As the evidence in this case makes clear, the answer to that question is no.
- Section 2 of the Voting Rights Act[2] and the Fourteenth and Fifteenth Amendments to the U.S. Constitution unequivocally bar Texas from enforcing SB 14's photo ID requirements.
- At its core, as court have recognized, "Section 2 of the VRA demands that racial discrimination not spread to the ballot box."[3]
- The evidence at trial has established that this is precisely what has occurred here.
- SB 14, hastily enforced in the wake of *Shelby County*, has already and will in the future—in election after election—disproportionately deny voters of color the right to participate fully and equally in the political process.
- That is the precise evil the VRA was designed to remedy; in fact, it is the reason that Section 2 of the VRA exists.
- SB 14's photo ID requirement should, indeed it *must*, be enjoined.

---

2 42 U.S.C. § 1973(a)

3 *Farrakhan v. Gregoire*, 590 F.3d 989, 1015 (9th Cir. 2010) *overruled on other grounds*, 623 F.3d 990 (9th Cir.2010) (en banc).

II. Racially Disparate Effect

- To begin, the evidence in this case has shown that SB 14 imposes unjustified, disparate burdens and racially discriminatory effects on the voting rights of more than 600,000 *registered* Texas voters.
- That number, 600,000, is nearly *twice* the population of all of Nueces County, where we sit today.[4] It is half of the population of Dallas and two-thirds of the population of Austin.
- Moreover, the expert testimony in this case shows that there is a significant racial disparity among the more than 600,000 registered voters affected by SB 14.
- Dr. Stephen Ansolabehere's ecological regression analysis shows that, in Texas, an incredible 8% of all Black registered voters, and 6% of all Latino registered voters lack SB 14-compliant ID, and thus are disfranchised by SB 14, as compared to only 2% of white registered voters.
- Those figures remain virtually uncontradicted by the record before this Court.

[4] Corpus Christi is the county seat for Nueces County. Decennial Census population of NC is 340k. http://quickfacts.census.gov/qfd/states/48/48355.html.

III. "Totality of the Circumstances" Analysis

- To be clear, Plaintiffs' and Plaintiff-Intervenors' argument does not rely on disparate impact alone.
- Section 2's results test requires this Court to conduct a searching inquiry into whether voters of color have an equal opportunity to participate in the political process under "the totality of the circumstances."[5]
- Here, an inquiry into these factors shows that SB 14 creates precisely the type of inequality in opportunity that Section 2 prohibits.
- The testimony of Drs. Vernon Burton, Barry Burden, Coleman Bazelon, and others, demonstrates that SB 14 disproportionately impairs the ability of Black voters to participate equally in the political process *because of their race*.
- As Dr. Lichtman testified, SB 14 "was passed, not in spite of, but because of race, and all of the evidence points in that direction."[6]
- It is in fact because of race—and, in particular, because of Texas's pattern of official historical and modern racial discrimination in voting, education,

[5] *Gingles*, 478 U.S. at 47 (emphasis added). 42 U.S.C. § 1973.
[6] Tr. 115:8-11 (Day 4).

employment, and housing—that SB 14 causes an inequality of access to the political process for Black voters in Texas.

- The evidence at trial made clear that SB 14 is the latest iteration in a series of discriminatory voting practices and devices intended to suppress the votes of Black people and other people of color that stretch back over more than a century.
- As Dr. Burton testified, for Black and other voters of color in Texas, the democratic experience, historically and into the present, has been contested—it has been an experience that has been characterized by periods of democratic expansion and then followed swiftly by contraction.
- Dr. Burton testified at length that gains in political participation by Black people have—time and time again—been met with official efforts to restrict access to the franchise or completely eliminate it.
- And this often happens precisely at the point when this community was on the verge of influencing democratic outcomes.

- Such official efforts have included, but are not limited to, the (1) all-white primary elections, (2) secret ballots, (3) poll tax, (4) and re-registration requirements and voter purging.
- Each of these devices was implemented by Texas as a discriminatory response to Black democratic expansion. And each of those devices—over a long century of struggle and sacrifice—was ultimately invalidated by the Voting Rights Act and/or the U.S. Constitution.
- Then, against the backdrop of Texas's substantial growth of 4 million people in the last 10 years alone, *nearly 90 percent of whom are people of color*, Texas once again erected a purportedly "race-neutral" device that, in fact, unnecessarily and purposefully erects barriers to the ballot box for voters of color.
- Like its ancestor voting practices, SB 14 must be struck down.

IV. Know Your History

- Now, Texas argues that this history is largely irrelevant; that it does not inform the present, and that the relevant time frame to consider for SB 14 is instead limited to 2011.

- But, as the testimony of Dr. Burton makes clear, SB 14 cannot be properly understood apart from its historical context.
- As both Drs. Burton and Burden explained, for example, SB 14 functions precisely like its poll-tax ancestor.
- Relying upon socioeconomic disparities and inequality, which themselves spring from Texas's state-sponsorship of racial discrimination in areas of life like education, housing, and employment, SB 14 discourages—if not outright prevents—Black voters from participating in the political process.
- And, as the testimony made clear, Texas's stated rationale for SB 14 boils down to protecting against voter fraud, and in particular in-person voter fraud.
- This particular pre-textual rationale is, unfortunately, familiar. As both Drs. Burton and Burden explained, Texas has repeatedly used that same rationale to pass laws that disfranchise voters of color.
    - For example, the stated rationale for ***all white primaries*** in Texas was the prevention of **VOTER FRAUD**.[7]

[7] Trial Tr. 22:25-23.

  - The stated rationale for ***secret ballot provisions*** in Texas was the prevention of **VOTER FRAUD**.
  - The stated rationale for ***poll taxes*** in Texas was the prevention of **VOTER FRAUD**.
  - The stated rationale for ***re-registration requirements*** and ***voter purges*** in Texas was also the prevention of **VOTER FRAUD**.

- But those laws' actual purpose—and what they, in large measure, accomplished—was racial exclusion: the prevention of voters of color from "holding the balance of power" in elections.
- But the evidence at trial made it clear that in-person voter fraud in Texas is vanishingly rare, and is not a credible justification for disfranchising hundreds of thousands of voters, particularly given the racially discriminatory effects of SB 14.
- **[**Although, tellingly, Texas did not produce any live witnesses before this Court to address evidence of in-person voter fraud, the Court heard various deposition readings alluding to the existence of such fraud.

- But the only quantifiable, reliable evidence of in-person voting fraud shows that there were between 2 to 4 cases of in-person voter impersonation at the polls in Texas from 2002 to the present.
- That is *2 to 4* cases of out of *tens of millions* of votes. And *that* is supposedly the basis on which Texas seeks to disfranchise hundreds of thousands of voters.
- The reality is that these examples simply cannot serve as the basis for a racially discriminatory law that disfranchises more than 600,000 registered voters.**]**

IV. Burden: EICs Are Anything But Free

- Now, Texas also argued that complying with SB 14 for these more than 600,000 registered voters is not burdensome because they can obtain a so-called "free" "Election Identification Certificate" or an "EIC".
- This argument is wholly without merit.
- As this Court heard from multiple witnesses, the EIC program has been an utter failure for two reasons.

- ***First***, the purported ease with which disfranchised voters can obtain an EIC is belied by testimony from affected registered voters that the EIC program has been fraught with inconsistencies, miscommunications, and confusion.
- The Court also received testimony that DPS employees themselves viewed the EIC program with a disappointing degree of cynicism.
- And the utter failure of the program is confirmed by testimony of DPS representative Tony Rodriguez, who admitted that, to date, fewer than 300 EICs have been issued in all of Texas.
- ***Second***, the EIC is simply not "free" in any meaningful respect.
- Instead, the evidence establishes that SB 14 imposes real, concrete costs on voters who must obtain an SB 14-compliant ID in order to vote in person in Texas.
- Specifically, as Dr. Bazelon demonstrated at trial, the average travel cost for affected registered voters to obtain an EIC is $36.33.
- Now, as Dr. Bazelon explained, that's a conservative number—it reflects only the cost of travel, and not all other potential costs a voter might incur in obtaining an

EIC, such as fees for underlying documentation, time spent gathering documentation or waiting at DPS, or the cost of childcare.

- But even standing alone, the travel costs of obtaining an EIC impose a significant burden on affected voters.
- As Dr. Bazelon demonstrated to the Court, the average travel cost of $36.33 represents 149% of average hourly earnings in Texas.
- By comparison, a poll tax of $1.75—which the Supreme Court found to constitute an undue burden on the right to vote in 1966—represented 69% of average hourly earnings at that time.
- Moreover, these costs are felt most acutely by Black voters in Texas, who because of Texas's long and enduring legacy of historical and ongoing racial discrimination, are disproportionately poor.
- Dr. Bazelon walked us through several socioeconomic factors, showing Black Texans have lower income, less household wealth, are more likely to live in poverty, and have higher unemployment rates than white Texans.

- The burden imposed by the costs of obtaining an EIC thus fall more heavily on Black Texans, who are disproportionately poorer, than on white Texans.
- The economic principle here is straight forward: the poorer a person, the more a dollar is worth to that person. Indeed, as Dr. Bazelon demonstrated, the travel costs of obtaining an SB 14 ID *alone* require Black people to expend a share of their wealth that is *more than four times higher* than the share of wealth required for a white Texan.
- The testimony in this case has also shown that the costs of obtaining an EIC are real and, for some, overwhelming.
- Ms. Sammie Bates testified, for example, that she had to choose between paying $42 to obtain her birth certificate and feeding her family.
- Because, as she testified, Ms. Bates and her family could not "eat" her birth certificate, she chose to feed her family.
- Such testimony perfectly crystallizes the burden of the costs to comply with SB-14 for poor Black people in Texas. For many Black Texans, like Ms. Bates, paying $42 to vote is prohibitive.

- Mrs. Elizabeth Gholar, similarly, testified that she has secured legal counsel in Louisiana to try to amend her birth certificate, just so that she can vote. She does not yet know how much money in legal fees and costs she will incur in that endeavor.
- In fact, she is not even sure whether those efforts, at any cost, will ultimately be successful.

V. Affected Individuals/Voting In Person

- The testimony of these affected individuals demonstrates the palpable harm that results from SB 14—harm that is a tragic continuation of a long and abiding history of state-sponsored efforts to silence the voices and votes of people of color.
- And, Your Honor, the impact of SB 14 is about far more than just dollars and cents. Mrs. Gholar's testimony vividly illustrates this reality.
- Ms. Gholar, who has lived in the South for most of her life, **testified about her experience coming of age in an era where racial discrimination was so pervasive that the births of Black people, including hers, were deemed so**

insignificant as not to take place in proper medical facilities or be recorded in accurate, contemporaneous birth certificates.

- For Mrs. Gholar, that historical discrimination is exacerbated by Texas's refusal on two occasions to issue her Texas-state identification: both times pointing to her "inaccurate" birth certificate as the reason why she cannot obtain an SB 14 required identification.
- Now, of course, Texas will argue that Mrs. Gholar and other similarly situated elderly voters are in fact not disfranchised by SB 14 because, as voters over the age of 65, they can vote by mail.
- But, the testimony of many witnesses at trial made resoundingly clear that this is no defense at all: voting in-person confers a unique, special dignitary benefit, particularly to voters of color who recall a time when they could not vote at all.
- As the evidence has shown, it is the history of exclusion from the political process that makes voting *in-person* for people of color so important.

- Reverend Peter Johnson explained to the Court that understanding "Black America" in the south means understanding that "going to vote and standing in line to vote is a 'big deal.'"
- He also noted that it is "extremely important for an 80-year old Black woman to stand in line to vote because she remembers a time when she was not permitted to do so."[8] Reverend Johnson's testimony was reinforced by the testimony of several affected voters for whom voting in person is not just preferred, but essential.
- Mrs. Gholar testified that she has *earned* the right to vote in person, that it is *precious* to her, and that she wishes to exercise that right *in person* in November.
- **[**Ms. Bates testified that she wants to "see [her] ballot go into the box where [she is] voting" and likes to "see it go as far towards where it's supposed to go as [she] possibly can."**]**
- And Senator Ellis testified that "in the African-American community, there is a strong tradition of showing up on Election Day." **[**Similarly, Congressman Marc

[8] Trial Tr. 19:8-19 (Day 3).

Veasey told the Court that his office helps senior citizens get to the polls because they want to vote in person.**]**

- Texas's argument that elderly voters of color should simply vote at home and forego the opportunity to cast their ballots in person is deeply offensive. Each of these elderly voters of color, like Mrs. Gholar, testified powerfully and unequivocally that voting *in person* is a **celebration**—one that Texas should not be allowed to ignore.

VI. Students Are Affected Too

- Unfortunately, Mrs. Gholar's case is illustrative of the inevitable unlawful effect that SB 14 has had—and will continue to have, election after election—on the fundamental rights of the most vulnerable segments of Texas's population.
- One of those vulnerable populations is young voters in Texas, particularly young voters of color. Your Honor heard testimony from Blake Green, from the Texas League of Young Voters Education Fund.

- Mr. Green testified that focusing on young voters is particularly important because voting, like many forms of civic participation, is a learned behavior.[9] Mr. Green testified that young voters of color can become agents for change in their respective communities, as he has, and can ultimately create better conditions in those communities.
- Mr. Green stated that, rather than strengthening their confidence in the democratic process, SB 14 actually *discourages* political participation among young voters by erecting unnecessary requirements to cast a ballot.
- One of the places where the League has done much of their important work is Prairie View A&M University, a historically Black university that has been subjected to a history of voter suppression efforts.
- Mr. Green testified that the League refers to Prairie View as "ground zero" because of the serial attempts by public officials to deprive Black students of their right to vote going back more than 40 years.

[9] http://www.naacpldf.org/files/publications/Defending%20Democracy%2012-5-11.pdf; (citing See Ryan P. Haygood, Juneteenth: Free At Last?, The Black Commentator, June 10, 2004, available at http://www.blackcommentator.com/94/94_juneenth.html

- Mr. Green stated that, through their work, the League has interacted with and registered scores of young voters of color at Prairie View and on other campuses who do not have SB 14-required forms of photo ID.
- These young people do not need drivers' licenses when they have no cars; they do not need concealed handgun licenses when they are not armed; they do not need passports when they have not yet had the opportunity to travel abroad.
- These student voters do, of course, have student IDs.
- But a student ID is one of the many forms of identification that Texas has, inexplicably, prohibited for use when voting in person at the polls, even though students have been using university IDs to vote for years in Texas.
- On this point, Drs. Lichtman and Burden testified that the use of student IDs is acceptable in other states, including both Indiana and Georgia.[10]
- And significantly, *not a single legislator* who voted *for* SB 14 testified before this Court about why the Texas Legislature chose to diverge from states like Indiana and Georgia at the acceptance of student IDs.

- Senator Rodney Ellis, by contrast, testified that the 82nd legislature knew that the exclusion of students IDs would be harmful to Black voters.[11]
- What makes the exclusion of student IDs particularly disturbing is that this Court heard testimony from one official after another who admitted that they were not aware of a single instance of a student ID being used to commit voter fraud here in Texas, or frankly, anywhere in the United States.[12]
- One affected Black student voter is our client, Imani Clark, a student at Prairie View A&M. Ms. Clark, who has voted in the past using her student ID, is now disfranchised by SB 14.
- Ms. Clark, a voter that has now been blocked from voting by SB 14 for a substantial portion of the time that she has been registered to vote in Texas, is but one student out of a generation of young Texans of color who are disenfranchised by SB 14.

---

[11] Trial Tr. 28:9 (Davis) (Day 4); Trial Tr. 105:19-106:7 (Fischer) (Day 1); Trial Tr. 178:2-179:2 (Ellis) (Day 4).

[12] Trial Tr. 411:5-14 (Fraser) (Day 7); Trial Tr. 296:23-297:1 (Patrick) (Day 7); Trial Tr. 212:6-14 (Hebert) (Day 8).

VII. Polls, Polls, Polls

- Texas' final defense of this discriminatory law is based on polls.
- Specifically, Texas argues that polling data show that voter ID laws enjoyed public support in Texas, including from Republicans, Democrats, and voters of color.[13]
- Such polls, however, are no defense to any of the claims in this case for at least two reasons.
- ***First,*** not one of these polls actually addressed the law the Texas Legislature enacted.
- That bears emphasis: *not one of the polls cited* by Texas was about SB 14 itself.
- As Representative Anchia testified, the precise language used in a particular polling question often determines the responses that the pollers receive.
- Thus, for example, a very different result might have been obtained if the question asked were: Would you support a photo ID requirement that is so strict that it will likely prevent more than 600,000 *registered* voters, a disproportionate number of whom are voters of color, from voting?

[13] *See e.g.*, Trial Tr. 360:13-361:17 (Day 5) (cross of Anchia)[13] *Requiem for a Nun*, 1950

- The fact that none of the polls actually asked about SB 14 or a similar law is a critical failure of proof that wholly undermines Texas's reliance on them.
- *Second*, and more fundamentally, the popularity of SB 14—or of *any* law—cannot insulate it from scrutiny under the VRA or Constitution any more than it could have insulated shameful laws that provided for such things as slavery, poll taxes, and racial segregation.
- For example, even if Defendants could show, which they have not, that the will of all Texans was truly to impose such a burden on voters of color, that law would still violate the VRA and the Constitution.
- Thankfully, polls have *never* been a proxy for a law's constitutionality.
- Just one generation ago, in a poll reported in the Victoria Advocate in 1954, an astounding 75% of adults in Texas disapproved of a Supreme Court ruling which would "outlaw racial segregation in the public schools." [14]
- Drs. Burton testified that, in 1963, a majority of Texas voters declined to remove the poll tax requirements from the state constitution through a state-wide referendum.[15]

- We can unfortunately imagine, sitting in this courtroom today, what contemporaneous polls would have shown here in Texas regarding the Chinese Exclusion Act in 1943 [year of Magnuson Act], the internment of Japanese Americans in 1946 [year of *Korematsu*], or interracial marriage in 1967 [year of *Loving*].
- And yet we are **not bound** in this Court of law by majoritarian impulses at isolated moments in time.
- Instead, we are bound by the U.S. Constitution and those laws passed in support thereof, like the Voting Rights Act.[16]
- Polls purportedly showing public support for SB 14 thus offer *no* basis whatsoever for this Court's upholding Texas's use of a racially discriminatory and unconstitutional photo ID law.
- This is especially true when the right at stake—the right to vote; a right the Supreme Court respects as a right that is preservative of all other rights—is itself fundamental and intersects with the right to be free of racial discrimination.

- Respectfully, we submit that this Court's role in our democracy is to be a bulwark against SB 14's erosion of plaintiffs' constitutional protections here in Texas.

VIII. Conclusion/Summary

- Your Honor, the evidence at trial has established that the truth of SB 14 is as follows:
- In 2011, the Legislature of the State of Texas found itself at a crossroads in the wake of two important, recent developments:
    - First, the historic political participation by voters of color in Texas in the last several election cycles; and
    - Second, the substantial growth of Black and Latino populations, as reflected in the 2010 Census.
- These voting and demographic trends foreshadowed a political landscape in Texas in which people of color will play a leading role.
- But Instead of recognizing this point of inflection in Texas's demographics as an opportunity—an opportunity for all elected officials to respond to the needs of new voters of color, and an opportunity for the State's legislative agenda to turn

to the most pressing concerns of an increasingly diverse population—those in power **resurrected** a tactic they had relied on before—racial exclusion—and sought to make it *more difficult* for Black and Latino voters to cast ballots.

- As Dr. Lichtman testified: "You can't change the demography of Texas, but you can pass laws that place disparate burdens for voting on African American and Latino" people.[17]
- SB 14 is a vivid reminder of the salience of William Faulkner's declaration years ago that, "The past is never dead. Indeed, it is not even past."[18]
- Through SB 14 Texas is repeating its dark past in an effort to disfranchise hundreds of thousands of voters, including a disproportionate share of voters of color, allegedly to prevent a problem that simply does not exist.
- Such a cynical infringement of a fundamental right is precisely what the Fourteenth and Fifteenth Amendments of the Constitution, and the Voting Rights Act, were enacted to proscribe.

- On behalf of the Texas League of Young Voters and Imani Clark, we therefore respectfully urge this Court to enter an injunction against the enforcement of the voter identification provisions of SB 14.
- Thank you, Your Honor, to you and your staff for tireless work in hearing this case.