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"Oversight Hearing on Enforcement of the Voting Rights Act in Texas"

United States House of Representatives Judiciary Committee

Hearing on May 3, 2019

Mr. Chairman and members of the Judiciary Committee, thank you for the opportunity to testify regarding the enforcement of the Voting Rights Act in Texas. I come to you as a long time litigator, who has represented the minority community in challenges to local, as well as state-enacted practices of voting discrimination. My name is Jose Garza, and I am the voting rights counsel for the Mexican American Legislative Caucus. The Mexican American Legislative Caucus (MALC) was founded in 1973 in the Texas House of Representatives by a small group of lawmakers of Mexican American heritage for the purpose of strengthening their numbers and better representing a united Latino constituency across the State. MALC is the oldest and largest Latino legislative caucus in the United States.

As of 2019, MALC has a membership of 41 House members from all parts of the State and is the largest nonpartisan caucus in the Texas Legislature. MALC Members sit on all but 3 Committees in the Texas House of Representatives and work together on matters of consequence to our state's large and growing Latino constituency. For almost 30 years MALC has been active in protecting Latino voting rights, not only in the legislative process, but also in the courts.

I am also the Litigation Director for Texas RioGrande Legal Aid, Inc. (TRLA). While TRLA is forbidden from participation in redistricting efforts of any

kind, TRLA has represented poor people of color against efforts to limit or deny our clients the right to vote.

In one recent case, my role as voting rights counsel for MALC and my work as Litigation Director for TRLA came together. In *Veasey v. Abbott*, MALC challenged Texas' efforts to infringe on the right of minority voters, especially poor and elderly Texas voters, to participate in the political process. In addition, poor, elderly Latino and African American clients of TRLA sued Texas, because the restrictions placed on voting through the Texas voter ID law would disenfranchise them. I represented both MALC and my TRLA clients in that action.

I also represented MALC in the Texas redistricting litigation, which commenced in 2011 and continues even now. In fact I come here directly from a hearing in San Antonio yesterday afternoon dealing with final remedy issues.

Today, I will focus my presentation on the voter ID litigation efforts and on the Texas Redistricting litigation.

TEXAS VOTER ID LITIGATION

In 2011, Texas (the "State") passed Senate Bill 14 ("SB 14"), which required individuals to present one of a limited set of acceptable forms of photo identification to vote. *See* Act of May 16, 2011, 82d Leg., R.S., ch. 123, 2011 Tex.

Gen. Laws 619. SB 14 was initially blocked by the Voting Rights Act's preclearance provisions. *See Texas v. Holder*, 888 F.Supp.2d 113 (D.D.C. 2012). However, on June 25, 2013, immediately after the Supreme Court decided *Shelby County, Alabama v. Holder*, Texas began enforcing SB 14, ignoring the findings of discrimination in the Section 5 proceedings. Numerous Plaintiffs, including MALC and my TRLA clients, filed legal challenges to the voter ID law pursuant to Section 2 of the Voting Rights Act as well as the United States Constitution. We alleged that SB 14 was enacted by the State with a racially discriminatory purpose, and that it had a racially discriminatory impact on Latino and African American voters of Texas in that it placed an undue burden on their fundamental right to vote.¹

After a nine-day bench trial featuring both live and deposition testimony from dozens of expert and lay witnesses, the Federal District Court issued a comprehensive opinion holding:

SB 14 creates an unconstitutional burden on the right to vote [under the First and Fourteenth Amendments], has an impermissible discriminatory effect against Hispanics and African-Americans [under Section 2], and was imposed with an unconstitutional discriminatory purpose [in violation of the Fourteenth and Fifteenth Amendments and Section 2]. [SB 14 constitutes an unconstitutional poll tax [in violation of the Fourteenth and Twenty-Fourth Amendments].

¹ The resources necessary to litigate this case were extreme. Without resources devoted to this case by MALC, TRLA, NAACP, BRENNAN CENTER, LAWYERS' COMMITTEE etc. this case could not have been properly prosecuted.

Veasey v. Perry, 71 F.Supp.3d 627, 633 (S.D. Tex. 2014) (footnote omitted).

Pursuant to that opinion, the Court entered “a permanent and final injunction against enforcement of the voter identification provisions” of SB 14 and directed the State to “return to enforcing the voter identification requirements for in-person voting in effect immediately prior to the enactment and implementation of SB 14.” *Id.* at 707.

However, Texas appealed that decision to the Fifth Circuit and secured a stay of the District Court order. The Fifth Circuit panel affirmed this Court’s finding that SB 14 had discriminatory results in violation of Section 2 and remanded for consideration of the proper remedy. *Veasey v. Perry*, 796 F.3d 490, 493, 498 (5th Cir. 2014). The State filed a petition for rehearing en banc, which was granted. *Veasey v. Abbott*, 815 F.3d 958 (5th Cir. 2016) (granting rehearing *en banc*). Upon rehearing, the full Fifth Circuit again affirmed the District Court’s finding that SB 14 violated Section 2 because of its discriminatory results and remanded to determine the appropriate remedy. *Veasey v. Abbott*, 830 F.3d 216, 272 (5th Cir. 2016) (en banc decision). On September 23, 2016, the State filed a petition for a writ of certiorari before the U.S. Supreme Court. Private Plaintiffs opposed that petition, and on January 23, 2017, the Supreme Court denied the petition.

On August 10, 2016, following the instructions of the full Fifth Circuit, the District Court ordered interim relief for the November 8, 2016 election (as well as prior and subsequent state and local elections) directing, *inter alia*, the State and its election officials to accept several forms of identification in addition to those mandated by SB 14 upon the completion and signing of a reasonable impediment declaration by the voter. This relief remained in place until SB 14 was amended to largely incorporate this Court's interim relief into State law. The Fifth Circuit held that this amendment did not moot the case but, by "essentially mirror[ing the] agreed interim order," constituted an acceptable remedy under the Fifth Circuit's 2016 ruling that SB 14 violated Section 2. *Veasey v. Abbott*, 888 F.3d 792, 804 (5th Cir. 2018).

MALC presented evidence of the hostile legislative environment surrounding the enactment. Representatives Ana Hernandez, Rafael Anchia and Trey Martinez Fischer gave dramatic testimony of how the legislation was forced to a vote, rules changed to ensure passage, and the acrimonious atmosphere during debate that infected the process.

The TRLA presented the testimony of the Plaintiffs and of an expert witness, exhibits and arguments that demonstrated the real and personal injuries caused by SB 14. The Court cited to that testimony in her opinion. *See Veasey v. Abbott*, 71 F. Supp. 3d 627, 667-678 (S.D. Tex. 2014)(e.g. describing the financial burden

imposed by the requirements: “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. Mr. Mendez testified about his family’s “very sad” financial state, explaining that “[e]ach month by the last week there’s no food in the house and nothing with which to buy any, especially milk for the children. Then my wife has to go to a place to ask for food at a place where they give food to poor people.” Mr. Mendez was embarrassed to admit at trial that having to pay for a new birth certificate was a burden on him and his family. Mr. Lara described his financial situation by stating that “we got each our little ... small amount of cash ... and we try to ... stretch it out as possible by the end of the month, and sometimes we’ll make it and sometimes we won’t.” Ms. Lara described her financial state as both difficult and very stressful.” *Veasey*, 71 F. Supp. 3d at 671-729(citations omitted)). TRLA Plaintiffs’ expert testified that the financial burdens of compliance with SB 4 on these voters placed an undue burden, unlike others who had the ID. *See e.g. Veasey*, 71 F. Supp. 3d at 668, n.272, and 705, n. 570.

These elderly, poor U. S. citizen voters testified about the importance of voting in their lives. They testified about how they had never missed an election. They described the joy of walking, on Election Day, to the polling location in their neighborhood, where everyone knew each other and everyone knew them and the

pride they felt when they voted. Yet, without the limited ID allowed by the State, nor the means to secure the IDs allowed, they would miss an election and just simply didn't understand why. In fact, one of our clients, Margarito Lara, missed the last election shortly after trial in the case, because of the stay of the Court's order secured by the State. It was the first election he had ever missed in his adult life. Tragically Mr. Lara passed away before the remedy in the case was imposed.

Finally, the evidence in the case and the findings of the different courts that reviewed the SB 14, also determined that, while Texas has the right to impose rules for voting, whatever voter misconduct the Voter ID law was supposed to cure, no such problem was ever identified or proved.

TEXAS REDISTRICTING LITIGATION

The 2010 census showed that Texas's population had grown by over four million since 2000. That growth was not evenly distributed; so to comply with the "one person, one vote" standard, Texas had to redraw the districts from which the members of the legislature are elected.

The district court described the context in which the Legislature undertook the post 2010 round of redistricting as one of "strong racial tension and heated debate about Latinos, Spanish-speaking people, undocumented immigration and sanctuary cities and the contentious voter ID law." Moreover, the over-all heavy population

growth in Texas was attributable to growth in the minority, primarily Latino, population. For instance, in Nueces County, the growth “was attributable to Hispanics, as both African-American and Anglo population declined.” In Bell County, “more than 70% of the growth” was attributable to an increase in minority population. In Dallas County, the minority population grew by 350,000, while Anglo population decreased “by over 198,000”. Overall more than 80% of the population growth in Texas was attributable to minority population growth.

Yet, Republican legislators were very reluctant to create any new minority opportunity districts. They worried any such districts would likely elect Democrats. As a result, despite the massive minority population growth, the Legislature not only failed to create any new minority opportunity districts, but also it actually reduced the number of minority opportunity districts. Section 5 in 2011 was invaluable in preventing the reduction of minority districts initially. Without Section 5 in effect, the 2013 redistricting plan adopted by the Texas Legislature was ratified by the United States Supreme Court, even though: 1) a Latino opportunity district in Nueces County was eliminated in the 2011 plan and carried forward in the 2013 plan; 2) the minority community in Killeen, (Bell County) was split in order to avoid drawing a minority majority district, (Rep. Aycock, the Bell County Rep. and author of the districts in Bell County testified that he tried to avoid creating a majority-minority district because it likely “would have probably got me unelected.”); and 3)

Dallas County Anglo voters were provided nearly 60% control of the Texas House districts in Dallas, although only a third of the population of the County. Moreover, in Dallas the 2013 plan used “bizarre configurations” to pack Latino population into Latino districts HD103 and HD 104, while using “jagged, bizarrely shaped” protrusions of “disproportionately Anglo” populations from HD 104 to be added into HD 105, which had been growing in Latino population. This was this kind of evidence relied upon by the District Court that let it to conclude that HD 103, HD 104 and HD 105 in Dallas County had been intentionally designed to dilute Latino voting strength.

Without Section 5, Section 2 jurisprudence continues to evolve in a manner that makes enforcement of the Voting Rights Act more difficult for minority voters. In 2018, a highly partisan and divided Supreme Court issued an opinion allowing the kind of discrimination against minority voters describe above, because the challenged districts had been part of the 2011 plan and the District Court had not specifically ruled on these challenges in its preliminary injunction rulings.

CONCLUSION

Texas has a long history of imposing restrictions on the right to vote that target minority voters. This practice was evident with the adoption of the voter ID law and in the redistricting plans adopted in 2011 and 2013 and has continued through today.

The loss of Section 5 protections and the weakening of Section 2 standards has been severely felt by minority Texas voters. In addition, while the litigation on these issues has been successful to this point, it took years to litigate. In fact the redistricting litigation, commenced in 2011 with two trips to the Supreme Court continues today. There was a hearing in the case just yesterday. The prosecution of these case required millions of dollars and thousands of hours of legal and expert time to properly develop and present and then defend on appeal.² And it just goes on and on.

Reform of the Voting Rights Act is vital. We need some form of Section 5 again. We need to clarify the standards by which a Section 2 plaintiff can prosecute a case of voting discrimination and we need the fee shifting provisions of the Act to be meaningful again.

Thank you.

² In addition to the need to reform the substance of the Voting Rights Act, the fee shifting provisions need to be addressed as well. This especially true with the jurisprudence on prevailing party that has developed out of the 5th Circuit. Without a vibrant and realistic standard, VRA enforcement will be greatly hampered. Perhaps a topic for another time.