**No. 17-40884**

# 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-CRUMMEY; KEN GANDY; GORDON BENJAMIN; EVELYN BRICKNER,
Plaintiffs-Appellees,

*v.*

GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS; ROLANDO PABLOS, IN HIS OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE; STATE OF TEXAS; STEVE MCCRAW, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE TEXAS DEPARTMENT OF PUBLIC SAFETY,
Defendants-Appellants.

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UNITED STATES OF AMERICA, Plaintiff-Appellee, IMANI CLARK, Intervenor Plaintiff-Appellee,

*v.*

STATE OF TEXAS; ROLANDO PABLOS, IN HIS OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE; STEVE MCCRAW, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE TEXAS DEPARTMENT OF PUBLIC SAFETY, Defendants-Appellants.

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TEXAS STATE CONFERENCE OF NAACP BRANCHES; MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES, Plaintiffs-Appellees,

*v.*

ROLANDO PABLOS, IN HIS OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE; STEVE MCCRAW,
IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE TEXAS DEPARTMENT OF PUBLIC SAFETY,
Defendants-Appellants.

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LENARD TAYLOR; EULALIO MENDEZ, JR., LIONEL ESTRADA; ESTELA GARCIA ESPINOSA; MAXIMINA MARTINEZ LARA; LA UNION DEL PUEBLO ENTERO, INCORPORATED,
Plaintiffs-Appellees,

*v.*

STATE OF TEXAS; ROLANDO PABLOS, IN HIS OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE; STEVE MCCRAW, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE TEXAS DEPARTMENT OF PUBLIC SAFETY, Defendants-Appellants.

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On Appeal from the United States District Court for the Southern District of Texas, Corpus Christi Division, Nos. 2:13-cv-193, 2:13-cv-263, 2:13-cv-291, and 2:13-cv-348

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**PRIVATE PLAINTIFFS-APPELLEES' MOTION TO LIFT STAY**

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## CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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/s/ *Chad W. Dunn*
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## INTRODUCTION

Private Plaintiffs respectfully request that this Court lift the stay issued in this case by a motions panel on September 5, 2017, pending the outcome of Texas's appeal. As a result of the current stay, beginning January 1, 2018, Texas will stop complying with the District Court's Interim Remedial Order—which was put into place in response to the en banc Court's order in this case—and begin to enforce Senate Bill 14 ("SB14") anew as amended by Senate Bill 5 ("SB5"). The District Court correctly held that SB5's amendments to SB14 perpetuate SB14's unconstitutional discrimination and cure neither SB14's discriminatory intent or results. Rather than permit Texas to continue to burden voters with a racially discriminatory law that has been roundly condemned by federal courts, this Court should lift the stay and allow the District Court's well-reasoned injunctive order to go into effect pending the outcome of the instant appeal. In the alternative, this Court should lift the stay and order Texas to implement the Interim Remedial Order that the District Court put in place in July 2016 to cure SB14's discriminatory results.

This case has been in active litigation in the federal courts for over four years—since June 2013—yielding four separate decisions that hold that Texas's strict photo identification law, SB14, is unlawful under the Voting Rights Act of 1965 ("VRA"). The District Court has twice issued opinions invalidating Texas's photo ID law as intentionally discriminatory in violation of the VRA and the Fourteenth and Fifteenth Amendments to the United States Constitution. This Court, sitting en banc, has determined that there is sufficient record evidence to support this finding. Nonetheless, until 2016, Texas was permitted to continuously enforce SB14, including in several state and national elections and countless local elections, thereby denying or imposing substantial burdens on the right to vote of hundreds of thousands of Texas voters and, disproportionately, Latino and Black voters. Since 2016, an Interim Remedial Order has been in place designed to address—on an interim basis—SB14's most harmful impact. Continuing the stay would eliminate some of the protections of even this interim measure.

The principal reason that Texas has managed to enforce its racially discriminatory photo ID law in election after election is that it has successfully sought and received a series of stays pending appeal,

virtually all due to the alleged imminence of upcoming elections and Texas's alleged inability to implement a new law in advance of those elections. Most recently, the motions panel cited upcoming local elections to justify staying the District Court's latest remedial order—which fully eliminates the intentional racial discrimination, as any remedy must, by enjoining both SB14 and SB5—requiring Texas to return to its pre-SB14 voter ID system. Although those local elections have now passed and no further elections are imminent, the stay remains in place, permitting Texas to enforce SB5, which retains the core of SB14's purposeful discrimination, and jeopardizing Private Plaintiffs' ability to receive complete relief in advance of the 2018 elections. Indeed, unless this Court grants the requested relief now, and in light of the time that will be consumed with the appellate process underway in this case, Private Plaintiffs may not have another opportunity to receive complete relief before the upcoming scheduled elections in 2018.

Absent the excuse of imminent elections, Texas cannot possibly meet the factors justifying a stay pending appeal. This Court should lift the stay and allow the District Court's injunctive order to go into effect. In the alternative, this Court should lift the stay and order Texas to

implement the Interim Remedial Order that the District Court put in place in July 2016 to cure SB14's discriminatory results. Since Texas contends that SB5's changes to the Interim Remedial Order are negligible, it cannot establish any irreparable harm in allowing it to remain in place pending the outcome of this appeal.

## BACKGROUND

The merits of this appeal have been briefed and argued, and the facts of this case are fully laid out in the parties' briefs and previously filed papers on the motion for a stay.[1] Thus, this section will focus only on facts particularly relevant to this Motion.

On April 10, 2017, the District Court issued an opinion holding that SB14 is the product of intentional racial discrimination. ROA.69764–73. The parties then filed briefs regarding the appropriate remedy. Texas submitted that SB5 cured SB14's discriminatory purpose and results.

[1] *See, e.g.,* Br. for Appellants, Doc. 00514199432; Br. for United States as Appellee, Doc. 00514212850; Br. for Private Pls.-Appellees, Doc. 005142209085 ("Private Pls.-Appellees' Br."); Reply Br. for Appellants, Doc. 00514244349; Appellants' Emerg. Mot. to Stay Pending Appeal District Court Order Granting Perm. Inj., Doc. 00514132325 ("Appellants' Emerg. Mot. to Stay"); Private Appellees' Resp. to Appellants' Emerg. Mot. to Stay Pending Appeal District Court Order Granting Perm. Inj., Doc. 00514138524 ("Private Appellees' Resp. to Mot. to Stay"); Resp. of United States to Appellants' Emerg. Mot. to Stay Pending Appeal District Court Order Granting Perm. Inj., Doc. 00514138769; Reply in Support of Appellants' Emerg. Mot. to Stay Pending Appeal, Doc. 00514141298.

Texas did not seek an evidentiary hearing to meet its burden of proof that SB 5—which deliberately weakened the District Court's interim results-only remedy—cured the violations. On August 23, 2017, the District Court issued an order, (1) rejecting Texas's proposed remedy as insufficient in light of its determinations that SB 14 violates Section 2 of the VRA and the Fourteenth and Fifteenth Amendments to the U.S. Constitution, (2) enjoining portions of SB14 and SB 5 in its entirety, and (3) ordering Texas to return to its pre-SB14 voter ID system. ROA.70452. The District Court's order followed longstanding precedent regarding the appropriate remedy when a law is deemed intentionally discriminatory. *See, e.g.*, *City of Richmond v. United States*, 422 U.S. 358, 378 (1975) (governmental acts motivated even in part by a racially discriminatory purpose "have no credentials whatsoever" and should never be enforced). Texas, citing imminent local elections, then filed a motion for an emergency stay pending appeal, which the District Court granted in limited part, directing that the Interim Remedial Order govern certain elections scheduled for late August and early September. ROA.70490-91; ROA.70492-93.

Texas then filed a motion in this Court seeking a broader stay pending appeal. On September 5, 2017, a divided motions panel granted Texas's motion. Although the majority asserted, without a full analysis, that Texas had a strong likelihood of success on the merits of its appeal, the focus of its opinion was on the perceived need to avoid changing the rules so close to "impending elections." Sept. 5, 2017 Order, Doc. 00514143426 at 5 ("Motions Panel Stay Op.").

Taking issue with all parts of the majority's analysis, the dissent concluded that Texas had not demonstrated any entitlement to a stay pending appeal. The dissent explained that Texas has not made a strong showing that it is likely to succeed on the merits given that the only remedy for an intentionally discriminatory law is to eliminate it "root and branch." *Id.* at 8-9 (Graves, J., dissenting) (quoting *Green v. Cty. Sch. Bd. of New Kent*, 391 U.S. 430, 438 (1968)). Moreover, the dissent concluded that the injunction barring enforcement of an intentionally discriminatory law would not cause Texas to suffer any irreparable injury, but that staying the injunction would cause significant irreparable injury to those whose right to vote would be burdened. *Id.* at 10-11. And even were a stay granted, the dissent observed, the stay

should be "comprehensive"—that is, staying both the District Court's order and SB5 and maintaining the Interim Remedial Order. *Id*. at 8.

Since that time, the 2017 elections at issue in the stay motion have come and gone. *See* Texas Sec'y of State, *Important 2017 Election Dates*, (last visited Dec. 15, 2017), https://www.sos.state.tx.us/elections/voter/2017-important-election-dates.shtml. The next regularly scheduled election is the statewide primary election on March 6, 2018, with early voting for that election scheduled to begin on February 20, 2018. *See* Texas Sec'y of State, *Important 2018 Election Dates*, (last visited Dec. 15, 2017), https://www.sos.state.tx.us/elections/voter/2018-important-election-dates.shtml. Based on information and belief, the next local elections are set for May 5, 2018 (with early voting for that election to begin on April 23); primary runoffs are set for May 22, 2018 (with early voting for that election to begin on May 14); and the statewide general election is set for November 6, 2018 (with early voting for that election to begin on October 22). *Id.*

## ARGUMENT

### I. LEGAL STANDARD

A judicial stay is an "intrusion into the ordinary processes of administration and judicial review, and accordingly is not a matter of right, . . . even if irreparable injury might otherwise result to the appellant." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (citation and quotation marks omitted). To issue a stay pending appeal, a court must consider "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* at 433–34 (citation omitted). "The first two factors . . . are the most critical," and the "party requesting a stay bears the burden of showing that the circumstances justify" a stay. *Id.*

The basis for the motions panel's decision to grant a stay pending appeal in this case—then-upcoming 2017 local elections—no longer applies. This Court should, therefore, lift the stay unless Texas can show that the stay factors continue to support the relief that it sought and

received in August and September of 2017. Texas cannot make this showing.

## II. THE STAY THREATENS TO CAUSE IRREPARABLE HARM BY DENYING PRIVATE PLAINTIFFS ANY REASONABLE POSSIBILITY OF COMPLETE RELIEF IN TIME FOR UPCOMING 2018 ELECTIONS

The fundamental reason that this Court should grant the relief sought in this Motion is to prevent an intentionally discriminatory law and its progeny from burdening the fundamental right to vote in upcoming elections, including those already scheduled for 2018. It is hard to imagine harm more significant or irreparable than that resulting from intentional racial discrimination. "[R]acial discrimination is not just another competing consideration" to be balanced against others—an intentionally discriminatory statute is entitled to no deference whatsoever. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977). Enforcing an abhorrent act of intentional racial discrimination injures not only the Private Plaintiffs and the entire public, but also the State of Texas itself. A court should, therefore, hesitate to sanction enforcement of a law found to be intentionally racially discriminatory—such as SB14 and its successor SB5, which retains the core of SB14's purposeful discrimination—without the

clearest showing that the finding would be overturned on appeal. For this reason, it is virtually unheard-of for a court to grant a stay pending appeal in a case involving a finding of purposeful racial discrimination.

Nonetheless, from Texas's perspective, the story of this case has been "heads we win, tails you lose." *Every* court that has reviewed Texas's strict photo ID law has found that it is racially discriminatory. Yet time and again, Texas, citing upcoming elections, has received stays pending appeal that have permitted it to enforce some version of its photo ID law in numerous local, state, and national elections. *See, e.g.*, Order, *Veasey v. Perry*, 769 F.3d 890 (5th Cir. Oct. 14, 2014) (No. 14-41127); Motions Panel Stay Op.; Opinion, *Veasey v. Perry*, 135 S. Ct. 9 (MEM.), 2014 WL 5311490 (Oct. 18, 2014) (No. 14A393); ROA.70490-91; ROA.70492-93. This unjust result has already caused substantial and irreparable harm to countless Texas voters, who are disproportionately Latino and Black. *Veasey v. Abbott*, 830 F.3d 216, 264 (5th Cir. 2016) (en banc).

Although this Court cannot unring that bell, it is not yet too late to protect Texas voters in upcoming elections, especially those already scheduled in 2018. And the stay issued by the motions panel, by its own

terms, is no longer necessary. Early voting for March statewide primary elections does not begin until February 20, 2018—more than two months from the time that this Motion has been filed—giving Texas plenty of time to take necessary steps to prepare to enforce the pre-SB14 voter ID law and to educate voters and election officials about the new requirements.[2] And even if some voters arrive at the polls mistakenly believing that they must present an SB5 ID, those voters would not be turned away: *all* SB5 IDs would qualify under the pre-SB14 law. *See* TEX. ELEC. CODE § 63.0101(2) (2010) (allowing use of any "form of identification containing the person's photograph that establishes the person's identity"). Thus, Texas cannot rely on upcoming elections to defeat the relief sought in this Motion. If Texas wishes to enforce SB5 in 2018 elections, it must be required to advance another justification sufficient to overcome the canon that an incomplete remedy to a law deemed unconstitutional is unenforceable.

If this Court denies this Motion, including the alternative relief sought, the clock may run out on Private Plaintiffs' ability to receive

[2] Alternatively, Texas should not have any difficulty implementing the Interim Remedial Order that it has been enforcing since July 2016 in local and statewide elections.

complete relief for intentional racial discrimination in time for scheduled elections in 2018. As explained *supra*, early voting for statewide primary elections begins in late February, and the election calendar is reasonably packed from then until the November statewide and national elections. As soon as those election dates become imminent, Texas will undoubtedly attempt to wield *Purcell v. Gonzalez*, 549 U.S. 1 (2006), and argue that the rules cannot be changed without risking confusion and administrative disarray. Such an argument has previously sufficed to permit Texas to enforce its photo ID law pending appeal—despite the multiple court opinions finding or suggesting that Texas's photo ID law is intentionally discriminatory, and despite the substantial irreparable harm that has resulted from Texas's enforcement of that law.

Nor can Private Plaintiffs count on a quick resolution of this appeal to protect their interests. Even if, as is likely for reasons explained *infra*, Plaintiffs prevail before the merits panel, it will take some time for the panel to render its decision, and Texas will then be free to seek en banc rehearing before the mandate issues. As Judge Smith explained in his dissent from the denial of initial hearing en banc, assuming the losing party in this appeal petitions for en banc review, "procedural steps will

consume enough time that it is impossible for a decision to be issued before some, if not all, of the 2018 elections are history." Oct. 10, 2017 Order, Doc. 00514189250 at 5 (Smith, J., dissenting from the denial of initial hearing en banc). On this schedule, absent the relief sought in this Motion, the stay would likely remain in place throughout the 2018 election season. And Judge Smith noted that he did not account for the possibility of further review by the U.S. Supreme Court, which would threaten to extend a final decision on this appeal until sometime in 2019—long after countless elections have concluded.[3]

In sum, Texas will almost certainly be able to enforce in upcoming elections, including those already scheduled in 2018, the progeny of SB14, a law that federal courts have held is racially discriminatory, and thereby would impose irreparable injury on Private Plaintiffs and all others who are similarly situated in exercising the fundamental right to vote—unless this Court grants the requested relief now. It is not hyperbole to state that this Motion may be Private Plaintiffs' last chance

[3] So long as the stay remains in place, the Supreme Court will likely treat the stay as the status quo, increasing the odds that the Supreme Court would permit Texas to enforce SB5 until its review is complete. *See Nken*, 556 U.S. at 429 (temporary stay is appropriate to "suspend[] judicial alteration of the status quo").

to receive complete relief in time for upcoming scheduled elections in 2018.

## III. TEXAS HAS NOT MADE A STRONG SHOWING THAT IT IS LIKELY TO SUCCEED ON THE MERITS OF ITS APPEAL

The remaining stay factors come nowhere close to justifying a continuation of the stay pending appeal despite the lack of imminent elections. As for Texas's likelihood of success on the merits of its appeal, Private Plaintiffs' opposition to Texas's stay motion, their merits appellate brief, and their oral argument lay out in detail why the District Court's intentional discrimination holding and remedy order are entirely proper and, thus, why Texas has not made a strong showing that it is likely to succeed on the merits of its appeal. Private Pls.-Appellees' Br.; Private Appellees' Resp. to Mot. to Stay. Rather than repeat in full that reasoning here, it is sufficient to emphasize that: the District Court, applying the factors set forth in *Arlington Heights*, 429 U.S. at 265-66, has twice invalidated SB14 as intentionally discriminatory; an en banc panel of this Court has examined the record and stated that it could support the District Court's intent finding; and, in any event, the District Court's intent finding is reviewed only for clear error.

Indeed, it bears emphasis that the District Court's detailed (147-page) intent opinion, supplemented and modified by its opinion on remand, is based entirely on factual conclusions that this Court has already found to be supported by record evidence and, thus, easily satisfies the requirements of Federal Rule of Civil Procedure 52. *See Cox v. City of Dallas*, 430 F.3d 734, 747 (5th Cir. 2005) ("Rule 52(a) does not require the district court to 'recite every piece of evidence supporting its findings' or to 'sort through the testimony of each of [the] witnesses.' . . . It simply require[s] findings that are explicit and detailed enough to enable us to review them under the applicable standard."); *see also* Private Pls.-Appellees' Br. at 11-12. Moreover, this Court's Rule 52 analysis is made easier because, as explained in Private Plaintiffs' Appellate Brief, *see, e.g.*, 13-14, and reiterated at oral argument, every one of the major factual inferences drawn by the District Court were found by the en banc Court to be legally relevant to the issue of discriminatory intent, and, taken together, sufficient to support an overall finding of discriminatory intent. *Veasey*, 830 F.3d at 242.

In its order granting a stay pending appeal, the motions panel ignored this backdrop and deferential legal standard, and instead made

much of SB5's "reasonable impediment" procedure. But the Fourth Circuit, addressing an analogous argument, has explained that it is insufficient merely to "lessen[] the discriminatory effect" of a law passed with discriminatory intent—the intentionally discriminatory law continues to violate the VRA if it imposes "any lingering burden." *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 219, 240 (4th Cir. 2016), *cert. denied*, 137 S. Ct. 1399 (2017). And the Fourth Circuit expressly held that requiring voters without photo ID to fill out a reasonable impediment affidavit imposes just such a "lingering burden." *See id.* at 240. Thus, the only appropriate remedy, and the one the Supreme Court has "consistently applied in cases of this nature," is an injunction barring the State from enforcing the law in its entirety (*i.e.*, SB14 and SB5)—precisely the relief the District Court ordered here. *Id.*

## IV. TEXAS WILL NOT SUFFER IRREPARABLE INJURY IF THE STAY IS LIFTED, AND THE PUBLIC INTEREST SUPPORTS LIFTING THE STAY

Where the State is the appealing party, its interest and the public's interest merge. *Nken*, 556 U.S. at 435. In this case, the merged state and public interest counsels strongly in favor of lifting the stay pending appeal. Other than claims of election confusion and administrative

disarray that are no longer applicable, the only supposedly irreparable injury Texas has identified is a generalized injury to its interest in enforcing its laws. Texas has found support for this argument in a stray statement from *Maryland v. King*, 133 S. Ct. 1, 2 (2012) (Roberts, C.J., in chambers), which Texas has read to suggest that an injunction barring enforcement of a state law categorically constitutes a form of "irreparable injury." Appellants' Emerg. Mot. to Stay at 19.

*King* is readily distinguishable. Unlike the intentional racial discrimination at issue here, that case concerned a stay of a judgment overturning a conviction because the state's DNA collection statute violated the Fourth Amendment. Surely the Supreme Court did not mean its analysis from that limited context to apply in every context, including where the State engages in odious intentional racial discrimination. *See* Mot. Panel Stay Op. at 10 (Graves, J., dissenting) ("It cannot be that . . . a state automatically suffers an irreparable injury when a court blocks any law it has enacted—regardless of the content of the law or the circumstances of its passing."). Otherwise, a State would be able to satisfy the irreparable harm prong of the four-factor stay test whenever a state statute is challenged, even though the Supreme Court

has cautioned that the decision whether to grant a stay depends "upon the circumstances of the particular case." *Nken*, 556 U.S. at 433; *see also id.* at 435 (refusing to find categorical irreparable injury).

For reasons stated *supra*, given the specific circumstances of this case—in particular, the repeated finding of intentional racial discrimination in Texas's voting laws—the public has a strong interest in *preventing* Texas from enforcing SB5. *See Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1056 (5th Cir. 1997) ("public interest would be undermined" were public entity's "unconstitutional actions" allowed to stand).

## V. ALTERNATIVELY, THIS COURT SHOULD ORDER THE USE OF THE INTERIM REMEDIAL ORDER UNTIL THE MERITS OF THE CASE ARE RESOLVED

Even if this Court does not agree that a return to pre-SB14 requirements are justified, there is no reason to allow SB5 to control elections pending resolution of this case. This Court has already affirmed, en banc, the District Court's finding of discriminatory results. Following that, the District Court issued the Interim Remedial Order to control elections pending its decision on discriminatory intent. ROA.67876-79. In its remedial order following the intent decision, the

District Court found that SB5 was deficient compared to the Interim Remedial Order, not only because it maintained the discriminatory intent of SB14, but also because it removed that portion of the Declaration of Reasonable Impediment created under the Interim Remedial Order that allowed voters without SB14 ID to explain in their own words their reasons for not having the required ID. ROA.70445-46. The deleterious impact of this omission was exacerbated, in the District Court's view, by the increased criminal penalty for false statements on the Declaration and the intimidating impact of the express notice to that effect. ROA.70446-47. The District Court's findings in that regard are entitled to Rule 52 deference. At a minimum, therefore, it is the Interim Remedial Order, and not SB5, that should govern further elections pending resolution of this appeal.

## CONCLUSION

For the foregoing reasons, the Private Plaintiffs respectfully request that the Court lift the stay entered in this case on September 5, 2017. In the alternative, Private Plaintiffs request that this Court lift the stay and order Texas to implement the Interim Remedial Order that has been in place since July 2016.

December 15, 2017

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

*/s/ Chad W. Dunn*

## CERTIFICATE OF COMPLIANCE

1. I certify that, on December 15, 2017, this document was transmitted to the Clerk of the United States Court of Appeals for the Fifth Circuit via the Court's CM/ECF document filing system.

2. I certify that this motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 3,893 words.

3. I certify that this motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word using 14-point Century Schoolbook typeface.

Date: December 15, 2017

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