

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ANNE HARDING, RAY §
HUEBNER, GREGORY R. §
JACOBS, MORGAN §
MCCOMB, AND JOHANNES §
PETER SCHROER §
Plaintiffs, §

V. §
§
COUNTY OF DALLAS, TEXAS §
CLAY LEWIS JENKINS, in his §
official Capacity as County Judge §
of Dallas County, et al., §
Defendants, §

C.A. NO. 3:15-CV-00131-D

SUPPLEMENTAL BRIEF
IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, County of Dallas, Texas, Clay Lewis Jenkins, in his capacity as County Judge of Dallas County, Texas, and Theresa Daniel, Mike Cantrell, John Wiley Price, and Elba Garcia, in their capacity as County Commissioners (hereinafter collectively referred to as “Defendants”) and file this Supplemental Brief in Support of their Response to Plaintiffs' Motion to Compel, ECF No. 42, 43 and Request for Oral Hearing, and would respectfully show the Court as follows:

I. INTRODUCTION

While this Court was receiving briefing and considering the pending Motion to Compel, the *en banc* Fifth Circuit issued its opinion in *Veasey v. Abbott*, the federal challenge to the Texas voter identification law passed in 2011. Defendants note that Fifth Circuit holding relates, in part, to limitations placed on the use of deposition testimony of elected official defendants in Section 2 litigation analysis. *Veasey v. Abbott*, No. 14-41127 (5th Circuit *en banc*, July 20, 2016) (attached as Exhibit A).

II. ARGUMENT

On July 20, 2016, the Fifth Circuit, *en banc*, affirmed the District Court's findings of discriminatory effect with respect to the State of Texas' Voter Photo ID

Law, and remanded the issue for an interim remedy, while also remanding the lower court's finding of discriminatory intent for reevaluation of the record before it.

The Panel noted that to aid in a court's intent inquiry as it relates to a legislative body, the court may "evaluate 'contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports. In some *extraordinary* instances, the members might be called to the stand at trial to testify concerning the purpose of the official action[.]'" *Veasey v. Abbott* at 17 (quoting *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 268 (1977)).

The Fifth Circuit reinforced that the lower court "placed inappropriate reliance upon the type of post-enactment testimony which courts routinely disregard as unreliable." *Veasey* at 19 (citing *Barber v. Thomas*, 560 U.S. 474, 486 (2010); also citing *Edwards v. Aguillard*, 482 U.S. 578, 596 n. 19 (1987)). In making this determination, the Circuit pointed out that the statements of a few cannot be the basis of judgment for the whole body. *See Veasey* at 20. This impermissible reliance on individual post-enactment testimony, which the Circuit found "may not be the best indicia of . . . intent" is the same type of testimony of which Plaintiffs seek to depose Defendants in this matter, specifically, the predicate for public statements made about the map. *Veasey* at 20.

As distinguished by Defendants in prior briefs, while the depositions of various legislators were taken in *Veasey*, as a result of the extreme circumstances under which the case presented itself, those permissible circumstances are not present in this action. In the affirmation of the District Court's discriminatory effects findings, the Fifth Circuit did not once reference deposition testimony of any defendant, while extensively citing to expert and *plaintiff* testimony. See e.g. *Veasey* at 46-49, 52, 54-56.

Defendants' desire to make this Court aware of this opinion generally and also to state the applicability of *Veasey's* holding to the discovery dispute currently before this Court.

III. CONCLUSION

For the reasons set forth above, Plaintiffs' Motion should be denied.

Dated this 26th day of July, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2016, I electronically filed the foregoing document(s) with the Clerk of the United States District Court for the Northern District of Texas, Dallas Division, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Chad W. Dunn
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