No. 12-40914

United States Court of Appeals for the Fifth Circuit

VOTING FOR AMERICA, INC., PROJECT VOTE, INC.,
BRAD RICHEY, and PENELOPE MCFADDEN,
Plaintiffs-Appellees,

v.

HOPE ANDRADE, in her official capacity as Texas Secretary of State,
Defendant-Appellant.

ON APPEAL FROM U.S. DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS, GALVESTON
DIVISION, NO. 3:12-CV-0044, HON. GREGG J. COSTA

AMICUS CURIAE BRIEF OF EAGLE FORUM EDUCATION & LEGAL DEFENSE FUND IN SUPPORT OF APPELLANT IN SUPPORT OF REVERSAL

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CERTIFICATE OF INTERESTED PERSONS

The case number is No. 12-40914. The case is styled as *Voting for America, Inc. v. Andrade.* 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 presentations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Project Vote, Inc.
Plaintiff-Appellee

Voting for America, Inc.
Plaintiff-Appellee

Brad Richey
Plaintiff-Appellee

Penelope McFadden
Plaintiff-Appellee

Hope Andrade, in her Official Capacity as Texas Secretary of State,
Defendant-Appellant

Cheryl E. Johnson, in her official capacity as Galveston County Tax Assessor and Galveston County Voter Registrar
Defendant

Eagle Forum Education & Legal Defense Fund
Amicus Curiae

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Dated: November 2, 2012

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IDENTITY, INTEREST AND AUTHORITY TO FILE

Amicus curiae Eagle Forum Education & Legal Defense Fund ("Eagle Forum") submits this *amicus* brief with the accompanying motion for leave to file.[1] Since its founding in 1981, Eagle Forum has consistently defended not only the Constitution's federalist structure, but also its limits on both state and federal power. In the context of the integrity of the elections on which the Nation has based its political community, Eagle Forum has supported efforts both to reduce voter fraud and to maximize voter confidence in the electoral process. Further, Eagle Forum has an active state chapter in Texas, and this Court's ruling will affect the voting rights of that chapter's members. For these reasons, Eagle Forum has a direct and vital interest in the issues before this Court.

STATEMENT OF THE CASE

In this interlocutory appeal, the Texas Secretary of State (hereinafter, "Texas") asks this Court to overturn a preliminary injunction that the district court entered in favor of plaintiffs Project Vote, its affiliate Voting for America, and two Galveston County residents (collectively, "Plaintiffs") against the operation of various elements of Texas law applicable to voter registration. Plaintiffs premise their challenge on both the First Amendment's protections afforded to voter-

[1] Pursuant to FED. R. APP. P. 29(c)(5), the undersigned counsel certifies that: counsel for *amicus* authored this brief in whole; no counsel for a party authored this brief in any respect; and no person or entity – other than *amicus*, its members, and its counsel – contributed monetarily to this brief's preparation or submission.

registration efforts and the preemptive effect of the National Voter Registration Act of 1993, 42 U.S.C. §§1973gg to 1973gg-10 ("NVRA"). In this brief, *amicus* Eagle Forum focuses on the NVRA merits issues and jurisdiction, although Eagle Forum fully agrees with the arguments that Texas provides against Plaintiffs' First Amendment arguments. *See* Texas Br. at 11-36.

As Texas points out, Texas law nowhere restricts the First Amendment rights of ***anyone*** to seek to register and organize voters; rather, Texas law governs the mechanics of the state voter-registration functions that Texas delegates to private citizens as who serve as volunteer deputy registrars ("VDRs"). Texas is under no obligation under either the NVRA or the First Amendment to deputize private citizens to serve the government functions at issue here. Moreover, if the First Amendment enters the fields actually at issue here – as distinct from the general category of private voter-registration efforts – the restrictions against prior restraints of First Amendment rights would overturn state laws nationwide. Because Plaintiffs' First Amendment claims lack merit, and Texas covers them well, *amicus* Eagle Forum does not revisit those claims in this brief.

STATEMENT OF FACTS

Amicus Eagle Forum adopts the facts as set forth by Texas. *See* Texas Br. at 4-7. In pertinent part, Eagle Forum emphasizes the following four facts relevant to this *amicus* brief. First, there is a documented history of misconduct in voter-

registration drives. Second, NVRA voter-registration forms contain sensitive personal information. Third, the challenged photocopying and personal-delivery provisions of Texas law were in place in 1985, prior to NVRA's enactment in 1993. Fourth, Texas does not regulate voter-registration drives, but does regulate the collection and handling of completed voter-registration forms.

STANDARD OF REVIEW

In reviewing the granting or denial of preliminary injunctive relief, appellate courts review factual questions under the clearly-erroneous standard but review legal questions *de novo. Bluefield Water Ass'n, Inc. v. City of Starkville*, 577 F.3d 250, 253 (5th Cir. 2009). In doing so, courts apply a familiar four-part test: (1) the applicant has a substantial likelihood of success on the merits; (2) the applicant faces a substantial threat of irreparable harm if the injunction is not granted; (3) the threatened injury outweighs any harm that the injunction might cause to the defendant; and (4) the injunction will not disserve the public interest. *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012). Even preliminary injunctions require Article III jurisdiction, *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 (1983), and courts may decide the merits at the jurisdictional stage "where… jurisdiction is dependent on … the merits." *Land v. Dollar*, 330 U.S. 731, 735 (1947).

SUMMARY OF ARGUMENT

Plaintiffs and the district court premise standing and Texas' alleged violations of federal law on hypothetical enforcement of Texas law contrary to how Texas has authoritatively interpreted its laws and on tenuous interpretations of the NVRA, which regulates state conduct in an area of traditional state regulation. As a jurisdictional matter, hypothetical – indeed, unlikely – future enforcement provides no basis for Article III jurisdiction (Section I.A). Moreover, even where jurisdiction is present, federal courts must tailor the injunctive relief to the claims for which the plaintiff has established standing (Section I.B). Similarly, even where Article III is met, Texas' sovereign immunity further limits the ability of federal courts to rely on future hypothetical violations of federal law to circumvent the Eleventh Amendment (Section II).

On the NVRA merits, this Court must apply a presumption against preemption to federal regulation in an area of traditional state regulation (Section III.A), and the NVRA is best interpreted as not applying to either the photocopying restriction or personal-delivery requirements of Texas law. That congressional silence cannot meet the requirement for a clear and manifest intent to preempt state law required here (Section III.B).

ARGUMENT

As Texas explains (Texas Br. at 51-53), this case presents an opportunity for

this Circuit to emphasize the extraordinary nature of interim injunctive relief, which appears necessary given the district court's decision to award a facial injunction based on hypothetical future enforcement contrary to Texas' authoritative interpretation of the challenged state laws. As explained in the following three sections, the hypothetical nature of Plaintiffs' claims raises serious – indeed, insurmountable – barriers to their prevailing under Article III, sovereign immunity, and the NVRA merits. Under the circumstances, this Court should honor Texas' request for an emphatic statement that plaintiffs who seek preliminary relief must make a ***clear showing*** of their entitlement to relief.

I. PLAINTIFFS LACK STANDING TO CHALLENGE THE FUTURE ENFORCEMENT OF TEXAS LAW IN A MANNER CONTRARY TO TEXAS' INTERPRETATION OF ITS LAWS

Article III limits federal courts' jurisdiction to cases and controversies, U.S. CONST. art III, §2, which presents "the threshold question in every federal case, determining the power of the court to entertain the suit." *Warth v. Seldin*, 422 U.S. 490, 499 (1975); *Allen v. Wright*, 468 U.S. 737, 750 (1984). These limitations "assume[] particular importance in ensuring that the Federal Judiciary respects the proper – and properly limited – role of the courts in a democratic society." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006) (citations and internal quotations omitted). As explained below, the district court exceeded that role.

To establish standing, a plaintiff must show that: (1) the challenged action

constitutes an "injury in fact," (2) the injury is "arguably within the zone of interests to be protected or regulated" by the relevant statutory or constitutional provision, and (3) nothing otherwise precludes judicial review. *Ass'n of Data Processing Serv. Org., Inc. v. Camp,* 397 U.S. 150, 153 (1970). An "injury in fact" is (1) an actual or imminent invasion of a constitutionally cognizable interest, (2) which is causally connected to the challenged conduct, and (3) which likely will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-62 (1992). Here, Plaintiffs lack an actual or imminent invasion of a cognizable right.

Under Article III, appellate courts "presume that federal courts lack jurisdiction unless the contrary appears affirmatively from the record," *Renne v. Geary,* 501 U.S. 312, 316 (1991), and the party invoking federal jurisdiction bears the burden of proof on each step of the jurisdictional analysis. *Defenders of Wildlife,* 504 U.S. at 561. Parties cannot grant jurisdiction by consent or waiver, *FW/PBS, Inc. v. City of Dallas,* 493 U.S. 215, 231 (1990), "[a]nd if the record discloses that the lower court was without jurisdiction [an appellate] court will notice the defect" and "the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co. v. Citizens for a Better Environment,* 523 U.S. 83, 94 (1998) (interior quotations omitted). Under the circumstances, *amicus* Eagle Forum respectfully submits that this Court should

remand with instructions to dismiss this action.

A. Speculative Future Enforcement that Is Contrary to the Authoritative Interpretation of Secretary Andrade Does Not Provide a Sufficiently Actual or Imminent Injury

As Texas explains (Texas Br. at 14), Plaintiffs' and the district court's concern about how non-VDRs might construe Texas law, contrary to Texas' authoritative interpretation, does not provide a sufficient case or controversy for Article III. The first element of an "injury in fact" requires that Plaintiffs face an actual or imminent invasion of a constitutionally cognizable interest. *Defenders of Wildlife,* 504 U.S. at 560-62. Accordingly, Plaintiffs cannot rely on future injury from exposure to forms of liability that only Plaintiffs argue to exist. That is not sufficiently actual or imminent for Article III, and it lacks the required "credible threat" of future enforcement. *Babbitt v. United Farm Workers Nat'l Union,* 442 U.S. 289, 298 (1979). Without a "credible threat" of enforcement, Plaintiffs lack standing to challenge that purely speculative enforcement exposure.

B. The Plaintiffs Lack Standing for an Injunction Against the Lawful Applications of Texas Election Law

Even if Plaintiffs somehow have standing to avoid future enforcement of Texas law in the manners that they purport to fear – and that Texas rejects – Plaintiffs still would lack standing to enjoin *lawful* applications of Texas law. This requires narrowing the injunctive relief for two interrelated reasons.

First, and most basically, Article III requires that a plaintiff have standing

for each form of injunctive relief provided by a federal court. *Summers v. Earth Island Institute*, 555 U.S. 488, 497-98 (2009). Thus, "standing is not dispensed in gross," and Plaintiffs must establish standing for all of the relief that they request. *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996). Standing to challenge a limited aspect or application of a law does not necessarily provide standing to challenge all aspects and applications of that law.

Second, as Texas explains (Texas Br. at 34-36), severability is a matter of state law, and Texas severability law limits relief to the successfully challenged ***applications*** of Texas law. TEX. GOV'T CODE §311.032(c). At some level, this provision of state law mirrors the Article III limit discussed in the previous paragraph, as well as the barriers to facial challenges in federal courts. *U.S. v. Salerno*, 481 U.S. 739, 745 (1987) ("facial challenge to a legislative Act is … the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid"). Because "[t]he fact that [the law] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid," *id.*, prevailing in an as-applied challenge is simply not the same as prevailing in a facial challenge. *Sorrell v. IMS Health Inc.*, 131 S.Ct. 2653, 2665 (2011); *I.N.S. v. Nat'l Ctr. for Immigrants' Rights*, 502 U.S. 183, 188 (1991); *cf. Gonzales v. Carhart*, 550 U.S. 124, 168 (2007) ("[a]s-applied challenges are the basic building blocks of

constitutional adjudication"). Given the tenuous nature of the basis for standing, any resulting injunctive relief must be similarly limited.

II. THE ONGOING FEDERAL-COURT SUPERVISION OF TEXAS' VOTER REGISTRATION EFFORTS VIOLATES TEXAS' SOVEREIGN IMMUNITY

In order to circumvent the sovereign State of Texas' immunity for suit in federal court, the *Ex parte Young* officer-suit exception requires an ***ongoing*** violation of federal law. Because Plaintiffs cannot point to an ongoing violation of federal law, this suit violates Texas' sovereign immunity. The violation of state sovereign immunity reinforces – indeed compels – the abstention that Texas argues that federal courts should exercise here. *See* Texas Br. at 31-33.

Under the Eleventh Amendment, "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI. *Ex parte Young* provides a limited exception that applies only to ***ongoing violations*** of federal law. Thus, for example, the exception was unavailable in *Green v. Mansour*, 474 U.S. 64, 66-67 (1985), where, after "Respondent … brought state policy into compliance," and the plaintiffs sought "a declaratory judgment that state officials violated federal law in the past when there is no ongoing violation of federal law." *Id.* Even if they bring a ***constitutionally*** sufficient case or controversy

under Article III, Plaintiffs no longer bring a claim that is sufficiently imminent to ignore Texas' sovereign immunity from suit in federal courts, which provide an inappropriate forum "to determine the constitutionality of state laws in hypothetical situations where it is not even clear the State itself would consider its law applicable." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381-83 (1992). Significantly, the *Morales* restrictions based on immunity apply even "assuming [that a plaintiff's challenge] would meet Article III case-or-controversy requirements." *Morales*, 504 U.S. at 382. Thus, while *amicus* Eagle Forum respectfully submits that Plaintiffs fall short of Article III, *see* Section I, *supra*, it would not end the immunity inquiry even if this Court holds otherwise on standing.

The registration of voters for the upcoming election is over, and Texas has not initiated the enforcement that Plaintiffs claim that they fear. Quite the contrary, Texas authoritatively interprets the Act contrary to Plaintiffs' claimed fears and has "accepted and used" the voter registration forms submitted in violation of state law. As such, the Eleventh Amendment prohibits federal courts' exercising jurisdiction over the sovereign State of Texas "to determine the constitutionality of state laws in hypothetical situations." *Morales*, 504 U.S. at 382-83. The only ***potential*** violation of federal election law ever present in this litigation – the possibility that Texas would decline to "accept and use" registration forms collected or submitted in violation of Texas law – did not materialize, and there is

no reason to suspect that Texas will deviate from its representations that it accepts and uses voter registration forms collected or submitted in violation of Texas law. Under *Mansour*, 474 U.S. at 66-67, there is no basis for ongoing federal supervision of Texas' voter registration procedures.

But even if this Court finds sufficiently imminent violations of federal law, Texas' immunity from suit compels this Court to narrow the injunctive relief to those violations, as distinct from the "blunderbuss" facial injunction here:

> This problem is vividly enough illustrated by the blunderbuss injunction in the present case, which declares pre-empted "any" state suit involving "any aspect" of the airlines' rates, routes, and services. As petitioner has threatened to enforce only the obligations described in the guidelines regarding fare advertising, the injunction must be vacated insofar as it restrains the operation of state laws with respect to other matters.

Morales, 504 U.S. at 383 (citations omitted). Accordingly, this Court should limit the preliminary injunction even if it finds that some applications of Texas law violate federal law.

III. THE NVRA DOES NOT PREEMPT TEXAS LAW, AND TEXAS LAW DOES NOT VIOLATE THE NVRA

In their NVRA claims, Plaintiffs argue that the provisions of Texas law on VDRs' photocopying completed voter-registration applications and on VDRs' personally delivering completed voter-registration applications violate two NVRA requirements. Both claims are contrary to NVRA's plain language, and the

personal-delivery claim is contrary to the facts of this case.

In 1993, Congress enacted the NVRA to promote the right of eligible citizens to vote in federal elections, 42 U.S.C. §1973gg(a), while at the same time "protect[ing] the integrity of the electoral process." 42 U.S.C. §1973gg(b)(3). The NVRA directs the Election Assistance Commission to adopt a mail voter registration application form, 42 U.S.C. §1973gg-7(a)(2), which the States "shall accept and use." 42 U.S.C. §1973gg-4(a)(1). The NVRA also requires states to "maintain for at least 2 years" and "make available for … photocopying" all "records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." 42 U.S.C. §1973gg-6(i). At the outset, unprocessed voter-registration forms are obviously not the type of programmatic records covered by §1973gg-6(i), and §1973gg-4(a)(1) simply does not discuss private citizens' or groups' mailing in the completed voter-registration forms of third-party citizens. In any event, Texas "accepts and uses" the voter-registrations forms submitted in violation of Texas law.

Plaintiffs simply cannot premise a federal lawsuit on perceived conflict or ambiguity where none exists, particularly where the federal government regulates in fields traditionally occupied by the states. *See* Section III.A, *infra.* In the related context of challenging laws as unconstitutionally vague, the Supreme Court has

expressly rejected that litigate-by-hypothetical approach:

> [The Eleventh Circuit's] basic mistake lies in the belief that the mere fact that close cases can be envisioned renders a statute vague. ***That is not so.*** Close cases can be imagined under virtually any statute.

U.S. v. Williams, 553 U.S. 285, 305-06 (2008) (emphasis added); *see also Women's Medical Center of Northwest Houston v. Bell*, 248 F.3d 411, 422 n.36 (5th Cir. 2001) ("speculation about possible vagueness in hypothetical situations not before the Court will not support a facial attack on a statute when it is surely valid in the vast majority of its intended applications") (interior quotations omitted). As indicated in the prior sections, this Court can avoid the issue by finding either that Plaintiffs lack standing from speculative enforcement or that Texas is immune from suit for hypothetical future interpretations of state law. Alternatively, this Court can reject Plaintiffs' baseless NVRA claims on the merits.

A. The Presumption Against Preemption Applies

Like all states, Texas "indisputably has a compelling interest in preserving the integrity of its election process." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (*quoting Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 231 (1989)); *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 189 (2008). "Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government," *Purcell*, 549 U.S. at 4, and "'debase[s] or dilute[es] … the weight of a citizen's vote just as effectively as by wholly prohibiting the free

exercise of the franchise.'" *Id.* (*quoting Reynolds v. Sims*, 377 U.S. 533, 555 (1964)). Moreover, the Texas laws against which Plaintiffs assert their NVRA challenges all pre-date the NVRA. As such, Congress acted here in an area of traditional state regulation, which implicates the presumption against any argument that NVRA preempted state law.

In all fields – and especially ones traditionally occupied by state and local government – courts apply a presumption against preemption. *Wyeth v. Levine*, 555 U.S. 555, 565 (2009); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *cf. U.S. v. Bass*, 404 U.S. 336, 349 (1971) ("[u]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance"). When this "presumption against preemption" applies, courts do not assume preemption "unless that was the clear and manifest purpose of Congress." *Santa Fe Elevator*, 331 U.S. at 230; *Wyeth*, 555 U.S. at 565. Moreover, even if Congress had preempted ***some*** state action, the presumption against preemption applies to determining the *scope* of preemption. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). Thus, "[w]hen the text of an express pre-emption clause is susceptible of more than one plausible reading, courts ordinarily accept the reading that disfavors pre-emption." *Altria Group, Inc. v. Good*, 555 U.S. 70, 77 (2008) (*quoting Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005)). In at least two Elections Clause decisions, the Supreme Court and, more recently, the Sixth

Circuit recognized that the traditional canons of preemption jurisprudence apply to litigation under federal laws enacted pursuant to the Elections Clause. *See Ex parte Siebold*, 100 U.S. 371, 393 (1880); *U.S. v. Bathgate*, 246 U.S. 220, 225 (1918); *Millsaps v. Thompson*, 259 F.3d 535, 537-39 (6th Cir. 2001).

As the Supreme Court has held, federal courts should "never assume[] lightly that Congress has derogated state regulation, but instead [should] address[] claims of pre-emption with the starting presumption that Congress does not intend to supplant state law." *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.*, 514 U.S. 645, 654 (1995) (*citing Maryland v. Louisiana*, 451 U.S. 725 (1981)). Of course, "never" means *never*. In *Siebold*, 100 U.S. at 393, the Court "presume[d] that Congress has [exercised its authority] in a judicious manner" and "that it has endeavored to guard as far as possible against any unnecessary interference with State laws." Similarly, in *Bathgate*, 246 U.S. at 225-26, the Court required Congress to "have expressed a clear purpose to establish some further or definite regulation" before supplanting state authority over elections and "consider[ed] the policy of Congress not to interfere with elections within a state except by clear and specific provisions." In *Millsaps*, the Sixth Circuit relied on the Supremacy Clause – and thus traditional preemption analysis – to review the preemptive effect of federal legislation on the timing of elections enacted under the Elections Clause. *See Millsaps*, 259 F.3d at 537-39.

This Court should follow the Sixth Circuit and must follow the Supreme Court in recognizing a presumption against preemption in this field of traditional state concern and regulation.

B. The NVRA Does Not Preempt the Photocopying Restrictions or the Personal-Delivery Requirements

Given the presumption against preemption that applies, Plaintiffs could not possibly prevail on their NVRA claims, even if those claims were more colorable than they are. Under *Altria Group,* 555 U.S. at 77, this Court should rule for Texas if the Court can reasonably interpret the NVRA consistently with Texas law. Given the gymnastics required to interpret Texas law ***inconsistently*** with the NVRA, that standard is readily met.

With respect to Texas' photocopying restriction, *see* TEX. ELECTION CODE §13.004, federal law simply cannot require that private parties have access to documents with sensitive personal information such as Social Security Numbers. Given that the NVRA is silent on the issue presented here (namely, the rights of private citizens delegated a governmental function), there is no basis for arguing that Congress even considered the issue, much less clearly and manifestly resolved it in Plaintiffs' favor. *Santa Fe Elevator,* 331 U.S. at 230; *Wyeth*, 555 U.S. at 565. In any event, the NVRA's record-access provision's plain language limits it – or at least plausibly limits it – to programmatic documents, *see* 42 U.S.C. §1973gg-6(i), which does not include unprocessed voter-registration forms. Under the

circumstances, Plaintiffs have no likelihood of prevailing on their NVRA photocopying claim.

With respect to Texas' personal-delivery requirement, *see* TEX. ELECTION CODE §13.042, the requirement that Texas "accept and use" the NVRA form is silent on third-party transmittal of those forms to state officials. *See* 42 U.S.C. §1973gg-4(a)(1). Because Texas indeed does accept and use the NVRA forms, even if submitted in violation of Texas law, Texas has done all that the NVRA requires. *Id.* As with the photocopying restrictions, NVRA's silence provides no basis for arguing that Congress clearly and manifestly resolved this issue in Plaintiffs' favor. *Santa Fe Elevator,* 331 U.S. at 230; *Wyeth,* 555 U.S. at 565. Under the circumstances, Plaintiffs have no likelihood of prevailing on their NVRA personal-delivery claim.

CONCLUSION

For the foregoing reasons and those argued by Texas, this Court should reverse the district court's decision and vacate the preliminary injunction.

Dated: November 2, 2012

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

No. 12-40914, *Voting for America, Inc. v. Andrade.*

1. The foregoing brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) because the brief contains 3,899 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii) and Circuit Rule 32.2.

2. The foregoing 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 the brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

Dated: November 2, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

No. 12-40914, *Voting for America, Inc. v. Andrade.*

I hereby certify that, on November 2, 2012, I electronically filed the foregoing brief – as an exhibit to the accompanying motion for leave to file – with the Clerk of the Court for the U.S. Court of Appeals for the Fifth Circuit by using the Appellate CM/ECF system, which effected service upon the following counsel via the CM/ECF system.

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CERTIFICATE REGARDING ELECTRONIC SUBMISSION

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I hereby certify that: (1) required privacy redactions have been made; (2) the electronic submission of this document is an exact copy of the corresponding paper document; and (3) the document has been scanned for viruses with the most recent version of a commercial virus scanning program and is free of viruses.

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No. 12-40914, Voting for America, Inc., et al v. Hope Andrade
USDC No. 3:12-CV-44

The following pertains to your brief electronically filed on November 7, 2012.

You must submit the seven paper copies of your brief required by 5TH CIR. R. 31.1 within 5 days of the date of this notice pursuant to 5th Cir. ECF Filing Standard E.1.

Sincerely,

LYLE W. CAYCE, Clerk

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