right to vote – that *results from the challenged standard or practice*." *Id.* at 637. In consequence, "the first element of the Section 2 claim requires proof that the challenged standard or practice *causally contributes* to the alleged discriminatory impact by affording protected group members less opportunity to participate in the political process." *Id.* at 637-38 (emphasis added). Only "[i]f this first element is met" does "the second step come[] into play." *Id.* at 638. But this step also requires a showing of causation. The second step "asks not just whether social and historical conditions 'result in' a disparate impact, but whether the challenged *voting standard or practice* causes the discriminatory impact as it interacts with social and historical conditions." *Id.* The Court concluded:

> The foregoing construction of Section 2 is . . . faithful to the statutory text and legislative history . . . [and] also makes practical sense. . . . [T]o apply Section 2 to invalidate . . . innocuous voting regulation[s] based solely on evidence that social and historical conditions resulted in a disparate impact would . . . punish a state for the effects of private discrimination. . . . We therefore clarify that [a challenged statute] is actionable as a Section 2 violation only if it is shown to causally contribute, as it interacts with social and historical conditions that have produced discrimination, to a disparate impact . . . .

Id. at 638-39.

In sum, the Ninth, Seventh, Third, Fourth, and Sixth Circuits all agree with Judge Tjoflat of this Circuit that Section 2 may only be used to challenge a voting practice or procedure that *particularly caused* a denial or abridgment of the right to vote on account of race or color. A racially disproportionate impact is not enough;

nor is a history of discrimination; nor are the two in combination. Quite simply, the challenged ID procedure must be shown by plaintiffs to cause discriminatory results in order to prove a Section 2 "results" claim.

By contrast, the standard for establishing a Section 2 violation in the Fifth Circuit is much less demanding. Under *Veasey*, a Section 2 claim can succeed whenever the racially disproportionate impact of a challenged practice or procedure "interacts," in any way, with an existing history of discrimination. It is this standard that Appellants urge this Court to adopt. *See* Op. Br. at 14 ("When facially neutral procedures 'interact[] with social and historical conditions' to disproportionately burden voters of color, then the 'result' is voting discrimination within the meaning of Section 2."); *id.* at ix (identifying *Veasey* as one of the primary cases on which Appellants rely); DE 255 at 122 (Section 2 requires "a discriminatory burden on members of a protected class" that is "caused by or linked to social and historical conditions that have produced discrimination").

The *Veasey* standard favored by Appellants is unworkable. Every single voting procedure has a differential effect by race, for every race we choose to consider. This is true of even the most mundane rules concerning clerks' office hours, the contents of mailings, written materials at the polls, the structure of ballots, translations, kinds of physical accommodations, registration and voting deadlines of every description, and allowable conduct in or near a polling place, let