IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES, Defendant, and TEXAS STATE CONFERENCE OF NAACP BRANCHES and MEXICAN AMERICAN LEGISLATIVE CAUCUS OF THE TEXAS HOUSE OF REPRESENTATIVES, Proposed Defendant-Intervenors.	Case No. 1:12-cv-00128 RMC-DST-RLW

APPLICANTS' MOTION TO INTERVENE AS DEFENDANTS

Pursuant to Fed. R. Civ. P. 24, the Texas State Conference of NAACP Branches ("Texas NAACP") and the Mexican American Legislative Caucus of the Texas House of Representatives ("MALC") (collectively, "Applicants") respectfully move to intervene in this case as party defendants. Pursuant to Local Civil Rule 7(j), a copy of the Complaint (ECF No. 1) is attached as Exhibit 1, and Applicants' proposed Answer to that Complaint is attached at Exhibit 2.

For the reasons set forth in the accompanying Memorandum, Applicants are entitled to intervention as of right under Fed. R. Civ. P. 24(a); in the alternative, this Court should permit Applicants to intervene under Fed. R. Civ. P. 24(b).

Dated: March 12, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 12, 2012, the foregoing Motion to Intervene (including Exhibits 1 and 2), a supporting Memorandum (including Exhibits A, B, and C), a proposed Order, a Local Civil Rule 7(m) Statement, and a Local Civil Rule 7.1 certificate were filed and served by (1) emailing PDF copies of same to the Clerk's Office (dcd_cmecf@dcd.uscourts.gov) and by (2) mailing hard copies of the documents to the following counsel:

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IN THE UNITED STATES DISTRICT COURT
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STATE OF TEXAS, Plaintiff, v. ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES, Defendant, and TEXAS STATE CONFERENCE OF NAACP BRANCHES and MEXICAN AMERICAN LEGISLATIVE CAUCUS OF THE TEXAS HOUSE OF REPRESENTATIVES, Proposed Defendant-Intervenors.	Case No. 1:12-cv-00128 RMC-DST-RLW

EXHIBIT 1

To Defendant-Intervenors' Motion to Intervene

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS
c/o Attorney General Greg Abbott
209 West 14th Street Austin, Texas 78701

Plaintiff,

vs.

ERIC H. HOLDER, JR.,
ATTORNEY GENERAL OF THE
UNITED STATES
950 Pennsylvania Ave., N.W.
Washington, DC 20530

Defendant.

EXPEDITED COMPLAINT FOR DECLARATORY JUDGMENT

1. The State of Texas brings this suit under section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c ("section 5"), and under 28 U.S.C. § 1331, and seeks a declaratory judgment that its recently enacted Voter-ID Law, also known as Senate Bill 14, neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, nor will it deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

I. THE PARTIES

2. The plaintiff is the State of Texas.

3. The defendant, United States Attorney General Eric Holder acting in his official capacity, has his office in the District of Columbia.

II. JURISDICTION AND VENUE

4. The Court has jurisdiction under 28 U.S.C. § 1331 and venue under 42 U.S.C. § 1973c.

III. THREE-JUDGE COURT

5. The State of Texas requests the appointment of a three-judge court under 42 U.S.C. § 1973b and 28 U.S.C. § 2284.

IV. FACTS AND BACKGROUND

6. On May 27, 2011, the Governor of Texas signed into law Senate Bill 14, which requires most voters to present a government-issued photo identification when appearing to vote at the polls. Voters who suffer from a documented disability as determined by the United States Social Security Administration or the Department of Veteran Affairs are exempt from this requirement. *See* SB 14 § 1. (Ex. 1). The Texas Election Code also permits voters over the age of 65, as well as disabled voters, to vote by mail, and those who vote by mail are not required to obtain or present photo identification when voting. *See* TEX. ELECTION CODE §§ 82.002–82.003.

7. Voters who lack a government-issued photo identification may obtain from the Texas Department of Public Safety (DPS) an "election identification certificate," which is issued free of charge and satisfies the photo-identification requirements of Senate Bill 14. *See* SB 14 § 20.

8. Under Senate Bill 14, voters who fail to bring a government-issued photo identification may still cast a provisional ballot at the polls. Those ballots will be accepted if the voter presents a government-issued photo identification to the voter registrar within six days after the election, or if the voter executes an affidavit stating that the voter has a religious objection to being photographed or that he has lost his photo identification in a natural disaster that occurred within 45 days of the election. *See* SB 14 §§ 17-18.

9. Senate Bill 14 resembles the Indiana Voter-ID Law that the Supreme Court of the United States upheld as constitutional in *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008). Indiana's law was allowed to go into effect upon enactment, because Indiana is not a "covered jurisdiction" under the Voting Rights Act. Other States, such as Wisconsin and Kansas, have enacted photo-identification requirements in 2011 and are permitted to immediately enforce their laws regardless of whether DOJ may object to those laws.

10. Senate Bill 14 also resembles the Voter-ID Law in Georgia that the Department of Justice precleared in 2005.

11. Section 5 prohibits a State subject to section 4(b) of the Voting Rights Act, 42 U.S.C. § 1973b(b), from enforcing "any voting qualification or prerequisite to voting . . . different from that in force and effect on November 1, 1964" unless the State either obtains a declaratory judgment from the

United States District Court for the District of Columbia that its election law "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color," or obtains approval for its law from the Attorney General of the United States. *Id.* § 1973c(a).

12. Because Texas is a "covered jurisdiction" under section 5 of the Voting Rights Act, it is not permitted to implement Senate Bill 14 unless the State obtains preclearance from either the Department of Justice or a three-judge panel of this Court. On July 25, 2011, the State of Texas submitted Senate Bill 14 to the Department of Justice for preclearance. Submission Letter, A. McGeehan to T. Herren (July 25, 2011) (Ex. 2).

13. On September 23, 2011, exactly 60 days after Texas had submitted Senate Bill 14 for administrative preclearance, and on the last possible day for DOJ to respond, the Department of Justice sent a letter to the Texas Director of Elections, stating that the information provided in the State's preclearance submission was "insufficient to enable us to determine that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group." Letter, T. Herren to A. McGeehan (Sept. 23, 2011) (Ex. 3). DOJ's response to the State requested, among other things, that Texas provide:

> "a. The number of registered voters in Texas, by race and Spanish surname within county of residence, who currently possess a Texas driver's license or other form of photo identification issued by DPS that is current or has expired

> within sixty days. Please include a description of the manner in which you calculated these numbers;
>
> "b. For the 605,576 registered voters who the State has advised do not have a Texas driver's license or personal identification card, please provide the number of such persons by Spanish surname, as well as an estimated number by race, within county of residence; and
>
> "c. Describe any and all efforts, other than the requirements outlined in Section 5 of Chapter 123, to provide notice to these individuals of the requirements of S.B. 14 and the availability of a free DPS-issued identification."

Id. at 2-3.

14. On October 4, 2011, Texas responded to DOJ in a letter that answered DOJ's questions and attached the data that Texas was capable of providing. Because Texas does not record the race of voters when they register to vote, the State explained that it was unable to determine the racial makeup of registered voters who lack DPS-issued identification. Indeed, the very reason Texas refuses to maintain racial and ethnic data on its list of registered voters is to facilitate a colorblind electoral process, and Texas adopted this race-blind voter-registration policy shortly after the enactment of the 1965 Voting Rights Act. In addition, until 2009, the DPS did not maintain a separate Hispanic category for driver's license holders to check when providing their racial or ethnic background—which further crimped the State's ability to calculate racial or ethnic breakdown of those who have (or do not have) DPS-issued photo-identification cards.

15. On November 16, 2011, DOJ responded to Texas's submission of additional information in a letter yet again claiming that the supplemental information provided by the State was "incomplete" and "does not enable us to determine that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group." Letter, T. Herren to A. McGeehan (Nov. 16, 2011) (Ex. 4). This time, DOJ demanded that the State provide a racial breakdown of each *county* of voters that possess DPS-issued identification, which would then be used to extrapolate the racial makeup of that group as compared to the general population.

16. On January 12, 2012, Texas provided the data that DOJ requested along with a letter explaining the State's concerns about the relevance of that data to the law's impact on minority voters. Letter, K. Ingram to T. Herren (Jan. 12, 2012) (Ex. 5).

17. On December 23, 2011, the Department of Justice announced that it denied preclearance to South Carolina's recently enacted Voter-ID Law—notwithstanding the Department of Justice's earlier decision to preclear a similar Voter-ID law in Georgia. In a letter explaining its decision, the Department of Justice cited data showing that 8.4% of white registered voters in South Carolina did not possess a photo identification issued by the State's Department of Motor Vehicles, while 10.0% of "non-white" registered voters in South Carolina did not possess this type of DMV-issued photo

identification. *See* Letter, T. Perez to C. Jones (Dec. 23, 2011), at 2 (Ex. 6).

The Department of Justice concluded this 1.6% "racial disparit[y]" compelled it to deny preclearance on the ground that South Carolina had "failed to meet its burden of demonstrating that [its Voter-ID law] will not have a retrogressive effect." *See* DOJ Letter to S.C. at 4-5. The Department of Justice rejected South Carolina's Voter-ID law notwithstanding the fact that South Carolina's law, like Texas's, provides free photo-identification to voters who lack the identification needed to vote, and permits voters who do not possess government-issued photo identification to cast provisional ballots on Election Day, which will be counted if the voter brings a valid and current photo identification to the county board of registration and elections before certification of the election.

18. Further, the Department of Justice's letter rejecting South Carolina's preclearance submission does not make a serious effort to reconcile its decision with the Supreme Court's ruling in *Crawford*—which not only upheld Indiana's Voter-ID law as constitutional, but also made clear that photo-identification requirements are "nondiscriminatory" election regulations. *See Crawford*, 553 U.S. at 203 (opinion of Stevens, J.) (upholding Indiana's photo-identification requirement as "a neutral, *nondiscriminatory* regulation of voting procedure."); *id.* at 205 (Scalia, J., concurring in the judgment) (The Indiana photo-identification law is a "generally applicable, *nondiscriminatory* voting regulation.").

19. Similarly, the Department of Justice's letter to South Carolina officials does not acknowledge the serious constitutional questions that arise from DOJ's decision to interpret section 5 in a manner that would preclude covered jurisdictions from enforcing the same type of election-fraud prevention measures that the Supreme Court has upheld as constitutional—and that fall within the States' reserved powers under the Tenth Amendment to the Constitution. *See generally Northwest Austin Mun. Utility Dist. No. One v. Holder*, 557 U.S. 193 (2009).

20. The Department of Justice's letter to South Carolina officials also fails to acknowledge its own previous decision to preclear the Voter-ID law in Georgia, and does not attempt to reconcile the Department's refusal to preclear South Carolina's Voter-ID law with its earlier preclearance rulings.

21. Now, six months after DOJ received Texas's preclearance submission for Senate Bill 14, and after multiple attempts to satisfy DOJ's demands for additional information, the State is still awaiting a preclearance decision from the Department of Justice.

22. In filing this complaint in this Court at this time, Texas assumes that DOJ will apply the same legal analysis and standards that it applied to South Carolina's Voter-ID law. Instead of waiting almost 60 more days, only to meet with further delays and demands from DOJ, and the seeming probability of an eventual rejection of Senate Bill 14 by DOJ, Texas files this complaint seeking judicial preclearance.

V. CLAIM FOR RELIEF

The State of Texas is entitled to a declaratory judgment granting preclearance to Senate Bill 14 under section 5 of the Voting Rights Act because Senate Bill 14 has neither the purpose nor the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority and otherwise fully complies with section 5 of the Voting Rights Act.

23. The allegations in paragraphs 6 – 22 are reincorporated herein.

A. Senate Bill 14 does not "deny or abridge" the right to vote.

24. The State of Texas respectfully requests a declaration from this Court that Senate Bill 14 does not "deny or abridge" the right to vote within the meaning of section 5, nor was it enacted with this purpose. Section 5 does not preclude covered jurisdictions from enacting generally applicable fraud-prevention laws, such as Senate Bill 14, that entail minor inconveniences on exercising the right to vote—especially when the covered jurisdiction mitigates those inconveniences through the mechanisms of free photo-ID cards and provisional ballots. For example, laws requiring that citizens register to vote prior to election day impose inconveniences that are similar to the one required by Senate Bill 14. But neither of these laws "denies" or "abridges" the right to vote.

25. Laws requiring voters to present proper identification at polling places are common. At the time of this complaint, no fewer than 31 States require voters to present some type of identification when voting at the polls. *See* http://www.ncsl.org/legislatures-elections/elections-campaigns/voter-id-

state-requirements.aspx. Further, 15 States have enacted laws that require voters to present a photo identification. *Id.*

26. These laws do not "deny" or "abridge" anyone's right to vote—a voter needs only to bring identification to the polls, and, in Texas, if a voter fails to bring the required government-issued photo identification to the polls then he can cast a provisional ballot that will be counted if the voter presents the required identification to the voter registrar within six days of the election. In addition, voters can obtain photo identification *free of charge* at any time, at their convenience, before the election—or after casting a provisional ballot—if they lack an acceptable form of government-issued identification.

27. DOJ's letter to South Carolina reflects a belief that *any* law that imposes even the *slightest* inconvenience on one's ability to vote represents a "denial" or "abridgement" of the right to vote—even when the State accommodates those who do not possess a photo identification by offering photo identification free of charge and by allowing voters without photo identification to cast provisional ballots. That is not a tenable construction of the Voting Rights Act, and it cannot be reconciled with the Supreme Court's ruling in *Crawford*. *See* 553 U.S. at 198 (opinion of Stevens, J.) ("[T]he inconvenience of making a trip to the DMV, gathering the required documents, and posing for a photograph *surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase*

over the usual burdens of voting.") (emphasis added); *id.* at 209 (Scalia, J. concurring in the judgment) ("The universally applicable requirements of Indiana's voter-identification law are eminently reasonable. The burden of acquiring, possessing, and showing a free photo identification is simply not severe, because it does not "even represent a significant increase over the usual burdens of voting." And the State's interests are sufficient to sustain that minimal burden.") (internal citations omitted).

28. The Supreme Court's ruling in *Crawford* also recognizes that allowing voters to cast provisional ballots mitigates any "burdens" that photo-identification requirements might otherwise impose on the right to vote. *See Crawford*, 553 U.S. at 199 ("The severity of that burden is, of course, mitigated by the fact that, if eligible, voters without photo identification may cast provisional ballots that will ultimately be counted."). Sections 17 and 18 of Senate Bill 14 allow voters who appear at the polls without the required identification to cast provisional ballots, an allowance that defeats any claim that the photo-identification requirement "denies" or "abridges" anyone's right to vote. Unlike many other voting changes that may actually prevent someone from participating in an election, Senate Bill 14's requirements will affect only the ballots of those who *choose* not to obtain the required identification that the State offers free of charge—either before the election or (for those who cast provisional ballots) in the six-day window following the election.

B. Senate Bill 14 does not deny or abridge the right to vote "on account of race or color."

29. The State of Texas respectfully requests a declaration from this Court that Senate Bill 14 does not deny or abridge the right to vote "on account of race or color," and that it was not enacted with that purpose. As the Supreme Court recognized in *Crawford*, photo-identification laws are "nondiscriminatory"; they apply to all voters regardless of race and they affect only those voters who choose not to obtain a photo identification (which the State offers free of charge) and present it either at the polls or to the voting registrar after casting a provisional ballot.

30. Even if minorities may be statistically less likely than whites to currently possess a government-issued photo identification (as DOJ asserts in its letter to South Carolina), that does not establish a section 5 violation. Section 5 precludes covered jurisdictions from enforcing those laws that have the "purpose" or "effect" of "denying or abridging the right to vote *on account of race or color*." *See* § 1973c(a) (emphasis added). Even if DOJ contends that Senate Bill 14 has the unintended effect of "denying" or "abridging" the voting rights of those who do not possess a government-issued photo identification, it does not do so *on account of their race or color*—it does so on account of their decision not to obtain the identification that the State offers free of charge.

31. The Department of Justice's Letter to South Carolina asserts that section 5 jurisdictions are forbidden to enforce any Voter-ID law that will "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *See* DOJ Letter at 1 (quoting *Beer v. United States*, 425 U.S. 130, 141 (1976)). This approach is irreconcilable with the language of section 5, which protects persons of *all* races from new voting laws that have the effect of denying or abridging the right to vote *on account of race or color*. Nothing in section 5 authorizes the Department of Justice or this Court to withhold preclearance from a neutral, nondiscriminatory voter-identification law simply because DOJ believes the law may have a disparate impact on minority voters—or white voters. The existing patterns of photo-ID possession will always vary somewhat by race, so these laws will *always* have a temporary differential effect on *some* race.

32. Section 5 *does* allow DOJ or this Court to withhold preclearance from voting qualifications that were enacted with the purpose of denying or abridging the voting rights of a particular race, or facially neutral voting qualifications that may have been enacted with benign motivations but that are *administered* by racially biased election officials who selectively enforce these laws to deny blacks the right to vote *on account of their race. See, e.g., South Carolina v. Katzenbach*, 383 U.S. 301, 312-13 (1966). But Texas's Voter-ID law was not enacted with the purpose of disenfranchising minority

voters, and there is not even a suggestion that the State would administer those laws in a racially biased manner.

33. *Beer*'s "nonretrogression" construction of section 5 arose from a case involving legislative reapportionment and must be limited to that context. *See Beer*, 425 U.S. at 141 ("It is thus apparent that *a legislative reapportionment that* enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the 'effect' of diluting or abridging the right to vote on account of race within the meaning of § 5."); *see also Reno v. Bossier Parish School Bd.*, 528 U.S. 320, 329 (2000) ("In *Beer v. United States*, 425 U.S. 130 (1976), this Court addressed the meaning of the no-effect requirement *in the context of an allegation of vote dilution.*") (emphasis added). The inherently unique nature of the reapportionment process is such that redistricting is fundamentally distinct from laws that govern the administration of elections or ballot-box integrity.

34. Extending "retrogressive effects" analysis to Voter-ID laws, by denying preclearance to any voter requirement that has an unintended disparate impact on minority voters, would present serious constitutional questions. The Fifteenth Amendment prohibits only voting restrictions that are *motivated by* racial discrimination. *See City of Mobile v. Bolden*, 446 U.S. 55, 62 (1980) ("[R]acially discriminatory motivation is a necessary ingredient of a Fifteenth Amendment violation."). If the Department of Justice's

apparent construction of section 5 operated to block Texas's Voter-ID law solely because it *may* have a *disparate impact* on racial minorities, then this Court will have to confront whether this interpretation of section 5 represents a permissible exercise of Congress's enforcement power under the Fifteenth Amendment. *See generally City of Boerne v. Flores*, 521 U.S. 507 (1997); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct. 2504 (2009). Courts must adopt any reasonably permissible construction of section 5 that will avoid these constitutional concerns. *See Nw. Austin*, 129 S. Ct. at 2511-14. To do that, this Court must cabin the "nonretrogressive effects" test to the context of legislative redistricting.

35. Even if non-retrogression extends beyond redistricting, it still should not extend to a law that imposes a temporary inconvenience no greater than the inherent inconvenience of voting. Whatever the initial disproportionate impact based on a snapshot of current patterns of photo-ID possession, those patterns are easily changed and cannot be the basis for a finding of disproportionate or retrogressive impact.

C. The Court must interpret section 5 of the Voting Rights Act to permit preclearance of Senate Bill 14 in order to avoid the grave constitutional question whether section 5 exceeds Congress's enforcement power under section 2 of the Fifteenth Amendment.

36. Any construction of section 5 that precludes Texas from implementing its Voter-ID Law will exceed Congress's enforcement power

under section 2 of the Fifteenth Amendment, or will at the very least present grave constitutional questions that this Court must avoid. A finding that covered jurisdictions cannot adopt a commonsense voting change already found to be non-discriminatory by the Supreme Court would highlight the constitutional difficulties with section 5. Accordingly, this Court must interpret section 5 in a manner that authorizes preclearance in this case. *See Nw. Austin*, 129 S. Ct. at 2511-14.

37. Section 2 of the Fifteenth Amendment empowers Congress to "enforce" the Fifteenth Amendment with "appropriate" legislation. This enforcement prerogative might permit Congress to enact laws that empower DOJ or this Court to deny preclearance to state laws *that actually violate* the Fifteenth Amendment. *See South Carolina v. Katzenbach*, 383 U.S. 301, 334 (1966) ("The Act suspends new voting regulations pending scrutiny by federal authorities *to determine whether their use would violate the Fifteenth Amendment.*") (emphasis added). But, as the Supreme Court recognized in *South Carolina*, placing the States under this form of administrative receivership pushes the constitutional boundaries of Congress's enforcement power under the Fifteenth Amendment. *Id.*

38. The Texas Voter-ID law does not violate the Fifteenth Amendment because it was not enacted with a racially discriminatory purpose. *See City of Mobile v. Bolden*, 446 U.S. 55, 62 (1980). In addition, the Supreme Court has explicitly upheld photo-identification laws against

constitutional challenges, declaring that these laws represent "nondiscriminatory" regulations of elections. *See Crawford*, 553 U.S. at 203 (opinion of Stevens, J.); *id.* at 205 (Scalia, J., concurring in the judgment). It is tenuous enough for a federal court or the Department of Justice to deny preclearance to a voting qualification that does not violate the Fifteenth Amendment; these constitutional concerns are further aggravated when preclearance is withheld from a law that the Supreme Court of the United States has explicitly upheld as constitutional.

39. Although the State of Texas does not deny that the Constitution may empower Congress to enact prophylactic legislation that extends beyond the self-executing right established in section 1 of the Fifteenth Amendment, any attempt by Congress to invoke its powers in this prophylactic manner necessarily raises serious constitutional questions. That is nowhere more obvious than in the case of section 5 of the Voting Rights Act, which represents an enormous intrusion into state sovereignty by reversing the bedrock assumption that duly enacted (and constitutional) state laws may take immediate effect. Accordingly, Congress is required to state its extra-constitutional prohibitions in clear and explicit language and justify this prophylaxis with legislative findings. *See, e.g.*, *Katzenbach v. Morgan*, 384 U.S. 641 (1966) (upholding a congressional prohibition on literacy tests only after noting "evidence suggesting that prejudice played a prominent role in the enactment of the [literacy-test] requirement"); *Oregon v. Mitchell*, 400

U.S. 112 (1970) (opinion of Black, J) (upholding a federal ban on literacy tests that was based on a congressional finding that "literacy tests have been used to discriminate against voters on account of their color."). *See also Bd. of Trustees of the Univ. of Alabama v. Garrett*, 531 U.S. 356 (2001); *Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000); *City of Boerne v. Flores*, 521 U.S. 507 (1997). The language of section 5 falls far short of the clear statement needed for this Court to even consider denying preclearance to the perfectly constitutional Voter-ID law that Texas has enacted.

40. The interpretation of section 5 that the Department of Justice adopted in its letter to South Carolina will establish a preclearance obstacle that sweeps far beyond what is necessary to enforce the Fifteenth Amendment. Both the Fourteenth and Fifteenth Amendments prohibit only those voting restrictions that are *motivated* by racial discrimination. *See City of Mobile v. Bolden*, 446 U.S. 55 (1980). To the extent that section 5 blocks laws that are free from racially discriminatory motives, it can survive only if its prophylactic scope satisfies the "congruent" and "proportional" test of *City of Boerne v. Flores*, 521 U.S. 507 (1997). Congress enacted the VRA 'to make the guarantees of the Fifteenth Amendment finally a reality for all citizens,' *Allen v. State Bd. of Elections*, 393 U.S. 544, 556 (1969), not to empower the Department of Justice to block States from enacting laws that do not violate the Fifteenth Amendment and that the Supreme Court has expressly upheld as constitutional.

41. There is no conceivable justification for construing section 5 in a manner that would enable DOJ or the federal courts to deny administrative preclearance to a law that the Supreme Court has already determined is non-discriminatory. Nor is there any justification for requiring Texas and South Carolina to wait for permission from DOJ (or a federal district court) before implementing their photo-identification laws. *Crawford* shows that litigants can bring immediate challenges to new voting requirements that are believed to disproportionately affect minorities, by invoking the Fourteenth and Fifteenth Amendments and section 2 of the VRA. And a district court can promptly issue a temporary restraining order or a preliminary injunction if the plaintiffs demonstrate a likelihood of success on the merits.

D. The Court must interpret section 5 of the Voting Rights Act to permit preclearance of Senate Bill 14 in order to avoid the grave constitutional question whether section 5 violates the Tenth Amendment.

42. Any construction of section 5 that precludes Texas from implementing its Voter-ID Law will violate the Tenth Amendment by denying covered jurisdictions the powers reserved to them under that amendment, or will at the very least present grave constitutional questions that this Court must avoid by interpreting section 5 to allow for preclearance in this case.

43. Although the Supreme Court in *Crawford* did not directly address the Tenth Amendment, by upholding Indiana's Voter-ID law the

Court effectively recognized that the States enjoy a reserved power under the Tenth Amendment to require voters to present photo identification at the polls—at least when appearing to vote for state and local officials. Congress therefore has no power to enact legislation to nullify Indiana's Voter-ID law for state and local elections. *See, e.g., Oregon v. Mitchell*, 400 U.S. 112, 125 (1970) (opinion of Black, J.) ("No function is more essential to the separate and independent existence of the States and their governments than the power to determine within the limits of the Constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices."). It follows that Congress cannot empower the Department of Justice or the federal courts to block Texas from requiring photo identification when conducting elections for state and local officials.

E. The Court should interpret section 5 of the Voting Rights Act in a manner that permits preclearance of Senate Bill 14 in order to avoid the grave constitutional question whether section 5 violates Texas's right to "equal sovereignty."

44. Section 5, if interpreted to forbid Texas to enforce its Voter-ID law, violates constitutional principles of federalism and state sovereignty by depriving Texas of equal sovereignty with other States.

45. Other States, such as Indiana, Kansas, and Wisconsin, have been able to enact and enforce similar laws without interference from DOJ.

Yet Texas is denied that ability to implement election-fraud prevention laws. This creates a two-tracked system of sovereignty, in which States such as Indiana, Kansas, and Wisconsin can enforce their photo-identification requirements, but Texas and South Carolina cannot, even though all of these state laws comply with the Constitution. As Justice Kennedy has aptly noted, "Texas is at a tremendous disadvantage" as result of the fact that "section 5 applies only to some States and not others." Oral Argument Transcript, *Perry v. Perez*, No. 11-713, at 38 Tr. 5-11 (Jan. 9, 2012). Worse, under DOJ's interpretation of section 5, Georgia can enforce its photo-identification requirements simply because it was fortuitous enough to seek administrative preclearance during a previous Administration.

46. Section 5, if interpreted to preclude preclearance of Senate Bill 14, relegates Texas to a diminished tier of sovereignty by disabling Texas from implementing a legitimate election fraud-prevention device. *See Crawford v. Marion County Election Board*, 553 U.S. 181, 196 (2008) (opinion of Stevens, J.) ("There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process."); *id.* at 196-197 ("[T]he fact of inflated voter rolls does provide a neutral and nondiscriminatory reason supporting the State's decision to require photo identification."). "Non-retrogression" cannot be invoked to

prohibit covered jurisdictions (such as Texas and South Carolina) from enacting *constitutional* fraud-prevention devices that non-covered jurisdictions (such as Indiana, Kansas, and Wisconsin) may implement.

VI. DEMAND FOR JUDGMENT

The State of Texas respectfully requests the following relief from the Court:

A. A declaratory judgment that Senate Bill 14 may take effect immediately because it neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, nor will it deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

B. All other relief to which the State of Texas may show itself to be entitled.

Respectfully submitted.

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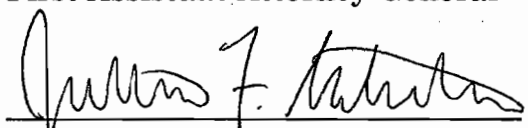
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General



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Dated: Jan. 23, 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES, Defendant, and TEXAS STATE CONFERENCE OF NAACP BRANCHES and MEXICAN AMERICAN LEGISLATIVE CAUCUS OF THE TEXAS HOUSE OF REPRESENTATIVES, Proposed Defendant-Intervenors.	Case No. 1:12-cv-00128 RMC-DST-RLW

EXHIBIT 2

To Defendant-Intervenors' Motion to Intervene

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES, Defendant, and TEXAS STATE CONFERENCE OF NAACP BRANCHES, and MEXICAN AMERICAN LEGISLATIVE CAUCUS OF THE TEXAS HOUSE OF REPRESENTATIVES, Proposed Defendant-Intervenors.	Case No. 1:12-cv-00128 RMC-DST-RLW **ANSWER TO COMPLAINT BY TEXAS STATE CONFERENCE OF NAACP BRANCHES AND MEXICAN AMERICAN LEGISLATIVE CAUCUS OF THE TEXAS HOUSE OF REPRESENTATIVES**

The Texas State Conference of NAACP Branches and the Mexican American Legislative Caucus of the Texas House of Representatives (collectively, "Defendant-Intervenors") answer the individually numbered and lettered paragraphs in the Complaint as follows:

1. Defendant-Intervenors admit the allegations of paragraph 1 to the extent that the instant lawsuit seeks a declaratory judgment under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and 28 U.S.C. § 1331. Defendant-Intervenors deny that Texas is entitled to the relief sought.

I. THE PARTIES

2. Defendant-Intervenors admit the allegations in paragraph 2.

3. Defendant-Intervenors admit the allegations in paragraph 3.

II. JURISDICTION AND VENUE

4. Defendant-Intervenors admit the allegations in paragraph 4.

III. THREE-JUDGE COURT

5. Defendant-Intervenors admit that this action must be heard and determined by a court of three judges, pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 2284. Defendant-Intervenors deny that a three-judge court is appropriate under 42 U.S.C. § 1973b.

IV. FACTS AND BACKGROUND

6. Defendant-Intervenors admit that Senate Bill 14 was signed on May 27, 2011 by the Governor of Texas, but deny the allegations of paragraph 6 to the extent that they indicate that the voting changes occasioned by Senate Bill 14, for which preclearance is sought in this action, are effective as law in the State of Texas. Defendant-Intervenors further admit that paragraph 6 provides an accurate summary of portions of Senate Bill 14, but deny that paragraph 6 provides a complete and accurate description of the requirements imposed by Senate Bill 14.

7. Defendant-Intervenors admit that § 20 of Senate Bill 14 amends Chapter 521A of the Transportation Code to provide for issuance of election identification certificates by the Texas Department of Public Safety, but deny the allegations of paragraph 7 to the extent that they indicate that the voting changes enacted in Senate Bill 14, for which preclearance is sought in this action, already have been implemented or are effective as law in the State of Texas. Defendant-Intervenors deny that paragraph 7 provides a complete and accurate description of the requirements for obtaining an election identification certificate as provided by Senate Bill 14. Defendant-Intervenors are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 7.

8. Defendant-Intervenors admit that §§ 17-18 of Senate Bill 14 provide for provisional ballot procedures for voters who fail to fail to bring a government-issued photo identification to the polls, but deny the allegations of paragraph 8 to the extent that they indicate that the voting changes enacted in Senate Bill 14, for which preclearance is sought in this action, already have been implemented or are effective as law in the State of Texas. Defendant-Intervenors deny that paragraph 8 provides a complete and accurate description of the provisional ballot procedures as provided by §§ 17-18 of Senate Bill 14. Defendant-Intervenors are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 8.

9. Defendant-Intervenors admit that the States of Indiana, Kansas and Wisconsin are not subject to the preclearance requirement of Section 5 of the Voting Rights Act; that these States have enacted laws which require voters to utilize certain forms of identification to identify themselves to election officials when seeking to cast a ballot; and that a facial challenge to the constitutionality of the Indiana law was denied in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008). Defendant-Intervenors deny the allegation in paragraph 9 that "Senate Bill 14 resembles the Indiana Voter-ID Law." Defendant-Intervenors otherwise state that paragraph 9 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors otherwise deny the allegations in paragraph 9.

10. Defendant-Intervenors admit that the State of Georgia enacted a law which requires voters to present certain forms of identification to election officials when seeking to cast a ballot at the polls, and admit on information and belief that the voting changes occasioned by that law received Section 5 preclearance from the Attorney General in 2005. Defendant-Intervenors aver that the Georgia voter identification law precleared by the Department of

Justice in 2005 was preliminarily enjoined by a federal court as both an unconstitutional poll tax and an unconstitutional burden on the fundamental right to vote, and subsequently was repealed by the State. Defendant-Intervenors deny the allegation in paragraph 10 that "Senate Bill 14 also resembles the Voter-ID Law in Georgia." Defendant-Intervenors otherwise state that paragraph 10 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors otherwise deny the allegations in paragraph 10.

11. Defendant-Intervenors admit that the provisions of Section 4 of the Voting Rights Act, 42 U.S.C. § 1973b, determine the jurisdictions subject to Section 5 of the Voting Rights Act, and that Section 5 of the Voting Rights Act precludes the State of Texas from implementing the voting changes occasioned by Senate Bill 14 unless and until Section 5 preclearance is obtained from this Court or from the Attorney General. Defendant-Intervenors deny that paragraph 11 provides a complete or accurate statement of the Section 5 coverage status of the State of Texas, or the substantive standards of Section 5. Defendant-Intervenors deny that Section 5 coverage of Texas is predicated on the date of November 1, 1964; Defendant-Intervenors aver that Section 5 coverage of the State of Texas is predicated on the date of November 1, 1972. Defendant-Intervenors deny that the standard under which Texas may obtain a Section 5 declaratory judgment from this Court is whether the proposed voting changes neither have the purpose nor effect of denying or abridging the right to vote on account of race or color; Defendant-Intervenors aver that Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c(a) provides that the State of Texas may not obtain a declaratory judgment from this Court unless it demonstrates that its proposed voting changes "neither [have] the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) [42 U.S.C. § 1973b(4)(f)(2)]."

12. Upon information and belief, Defendant-Intervenors admit that Texas made a Section 5 submission to the Attorney General seeking administrative preclearance for the voting changes occasioned by Senate Bill 14, and that the date of the Attorney General's receipt of the original submission was July 25, 2011. Upon information and belief, Defendant-Intervenors aver that, thereafter, Texas provided additional information that was received by the Attorney General through September 15, 2011, prior to the Attorney General sending a written request for additional information on September 23, 2011.

13. Upon information and belief, Defendant-Intervenors admit that paragraph 13 accurately quotes portions of the referenced September 23, 2011 letter from the United States Department of Justice. Defendant-Intervenors admit that September 23, 2011 was 60 days after July 25, 2011, but deny that September 23, 2011 "was the last possible day for DOJ to respond."

14. Upon information and belief, Defendant-Intervenors admit that a letter from Texas to the Attorney General, dated October 4, 2011, provided some information in response to the Attorney General's September 23, 2011 request for additional information. Defendant-Intervenors admit that the referenced October 4, 2011, letter asserted that Texas does not record the race of voters when they register to vote; that the referenced October 4, 2011, letter asserted that Texas was unable to determine the racial makeup of registered voters who lack DPS-issued identification; and that the referenced October 4, 2011, letter asserted that the Texas Department of Public Safety did not maintain a separate Hispanic category for driver's license "holders" to check when providing their racial or ethnic background prior to 2009. Defendant-Intervenors are without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations in paragraph 14, and therefore deny the remaining allegations in paragraph 14.

15. Upon information and belief, Defendant-Intervenors admit that the first sentence of paragraph 15 accurately quotes portions of a letter dated November 16, 2011, from the Department of Justice to Texas. Defendant-Intervenors deny that the remaining allegations in paragraph 15 accurately describe the referenced November 16, 2011 letter.

16. Upon information and belief, Defendant-Intervenors admit that on January 12, 2012, Texas provided some additional information to the Department of Justice. Defendant-Intervenors deny that the referenced January 12, 2012, letter materially questioned the relevance of the data provided; Defendant-Intervenors aver that the concerns expressed in the referenced letter concerned the reliability of the data. Defendant-Intervenors otherwise deny the allegations in paragraph 16.

17. Defendant-Intervenors admit the first sentence of paragraph 17 to the extent that that the Attorney General interposed a Section 5 objection to a South Carolina photo identification law on December 23, 2011. Defendant-Intervenors admit that the second sentence of paragraph 17 accurately notes some, but not all, of the statistics discussed in the Attorney General's December 23, 2011 letter. Defendant-Intervenors admit that the third sentence of paragraph 17 accurately quotes the December 23 letter insofar as the letter stated that South Carolina failed to meet its burden of demonstrating the absence of a discriminatory effect; Defendant-Intervenors deny that the "racial disparities" cited by the Attorney General in the December 23 letter consist solely of the percentage disparity alleged in the third sentence of paragraph 17. Defendant-Intervenors otherwise state that the remainder of paragraph 17 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors otherwise deny the allegations in paragraph 17.

18. Defendant-Intervenors state that paragraph 18 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 18.

19. Defendant-Intervenors state that paragraph 19 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 19.

20. Defendant-Intervenors state that paragraph 20 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 20.

21. Upon information and belief, Defendant-Intervenors admit that as of March 9, 2012, the Attorney General has not issued a determination on the merits of Texas' administrative submission of the voting changes occasioned by Senate Bill 14. Defendant-Intervenors deny that Texas made a complete Section 5 submission on July 25, 2011, or before the Department of Justice's September 23, 2011, request for additional information, and deny that Texas made a complete response to the Department of Justice's September 23, 2011 request in its November 16, 2011 response. The remainder of Paragraph 21 is comprised of legal conclusions and arguments to which no answer is required; to the extent an answer is required, Defendant-Intervenors deny the remainder of paragraph 21.

22. Defendant-Intervenors state that paragraph 22 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 22.

V. CLAIM FOR RELIEF

Defendant-Intervenors deny the allegations in the unnumbered paragraph which immediately precedes paragraph 23 of the Complaint.

23. Defendant-Intervenors incorporate by reference their answers to Paragraphs 6 through 22 of the Complaint, above.

A. Defendant-Intervenors deny the allegations in paragraph (or header) "A."

24. Defendant-Intervenors state that paragraph 24 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 24.

25. Upon information and belief, Defendant-Intervenors admit that multiple states have enacted laws which establish a variety of procedures by which voters are to identify themselves at the polls. Defendant-Intervenors deny that 15 states require photographic IDs to cast a regular ballot, and aver that this number includes states which provide other means for obtaining a regular ballot without a photographic ID. Defendant-Intervenors otherwise deny the allegations in paragraph 25.

26. Defendant-Intervenors admit that Senate Bill 14 provides for a provisional ballot procedure. Defendant-Intervenors deny that the photo identification required by Senate has no associated cost. Defendant-Intervenors deny that the photo identification required by Senate Bill 14 may be obtained at any time at the convenience of the voter. The remainder of paragraph 26 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the remaining allegations in paragraph 26.

27. Defendant-Intervenors state that paragraph 27 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 27.

28. Defendant-Intervenors admit that §§ 17 and 18 of Senate Bill 14 provide for a provisional ballot procedure. Defendant-Intervenors deny that Senate Bill 14 "will affect only the ballots of those who *choose* not to obtain the required identification," and deny that the photo identification required by Senate Bill 14 has no associated cost. The remainder of paragraph 28 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the remaining allegations in paragraph 28.

B. Defendant-Intervenors deny the allegations in paragraph (or header) "B."

29. Defendant-Intervenors deny that the voting changes occasioned by Senate Bill 14, for which preclearance is sought in this action, do not deny or abridge the right to vote on account of race or color, and were not enacted with that purpose. Defendant-Intervenors further aver that, although not alleged in paragraph 29 of the Complaint, Texas also is required by Section 5 to demonstrate that the voting changes do not deny or abridge the right to vote on account of membership in a language minority group, and were not enacted with that purpose; Defendant-Intervenors deny that the voting changes satisfy that legal standard. Defendant-Intervenors state that the remaining allegations in paragraph 29 are comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the remaining allegations in paragraph 29.

30. Defendant-Intervenors deny that Section 5 only bars the implementation of voting changes that deny or abridge the right to vote on account of race or color; Defendant-Intervenors aver that Section 5 also bars the implementation of voting changes that deny or

abridge the right to vote on account of membership in a language minority group. Defendant-Intervenors deny that the voting changes occasioned by Senate Bill 14, for which preclearance is sought in this action, do not deny or abridge the right to vote on account of race or color, or membership in a language minority group. Defendant-Intervenors state that paragraph 30 otherwise is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the remaining allegations in paragraph 30.

31. Defendant-Intervenors deny that Section 5 only bars the implementation of voting changes that deny or abridge the right to vote on account of race or color; Defendant-Intervenors aver that Section 5 also bars the implementation of voting changes that deny or abridge the right to vote on account of membership in a language minority group. Defendant-Intervenors state that paragraph 31 otherwise is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the remaining allegations in paragraph 31.

32. Defendant-Intervenors deny that Texas has met, or will meet, its burden of demonstrating that the voting changes occasioned by Senate Bill 14, for which preclearance is sought in this action, were not enacted with a discriminatory purpose. Defendant-Intervenors state that paragraph 32 otherwise is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the remaining allegations in paragraph 32.

33. Defendant-Intervenors specifically deny that the non-retrogression standard announced by the Supreme Court in *Beer v. United States*, 425 U.S. 130, 141 (1976), is limited to voting changes that involve a reapportionment or redistricting plan. Defendant-Intervenors state that paragraph 33 is comprised of legal conclusions and arguments to which

no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 33.

34. Defendant-Intervenors deny that the *Beer* non-retrogression standard is limited to voting changes that involve a reapportionment or redistricting plan, and deny that the application of the non-retrogression test to other types of voting changes (including a photo ID requirement) "would present serious constitutional questions." Defendant-Intervenors state that paragraph 34 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 34.

35. Defendant-Intervenors state that paragraph 35 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 35.

C. Defendant-Intervenors deny the allegations in paragraph (or header) "C."

36. Defendant-Intervenors deny that a decision by this Court to withhold preclearance to the voting changes occasioned by Senate Bill 14, for which preclearance is sought, would present any constitutional issues or concerns. Defendant-Intervenors state that paragraph 36 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 36.

37. Defendant-Intervenors state that paragraph 37 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 37.

38. Defendant-Intervenors deny that Texas has met, or will meet, its burden of demonstrating that the voting changes occasioned by Senate Bill 14, for which preclearance

is sought, were not adopted with a discriminatory purpose, and deny that a decision by this Court to withhold preclearance would present any constitutional issues or concerns. The remainder of paragraph 38 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the remaining allegations in paragraph 38.

39. Defendant-Intervenors deny that Texas is entitled to Section 5 preclearance of the voting changes enacted by Senate Bill 14 for which preclearance is sought, and deny that a decision by this Court to withhold preclearance would present any constitutional issues or concerns. Defendant-Intervenors state that paragraph 39 otherwise is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the remaining allegations in paragraph 39.

40. Defendant-Intervenors deny that the inclusion in Section 5 of a prohibition on voting changes that have a discriminatory effect presents any constitutional issues or concerns. Defendant-Intervenors state that paragraph 40 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 40.

41. Defendant-Intervenors deny that the Supreme Court has determined that the voting changes enacted by Senate Bill 14, for which preclearance is sought, are nondiscriminatory under Section 5. Defendant-Intervenors state that paragraph 41 otherwise is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the remaining allegations in paragraph 41.

D. Defendant-Intervenors deny the allegations in paragraph (or header) “D.”

42. Defendant-Intervenors deny that a decision by this Court to withhold preclearance would present any constitutional issues or concerns. Defendant-Intervenors state that that paragraph 42 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in this paragraph.

43. Defendant-Intervenors state that paragraph 43 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 43.

E. Defendant-Intervenors deny the allegations in paragraph (or header) "E."

44. Defendant-Intervenors deny that a decision by this Court to withhold preclearance would present any constitutional issues or concerns. Defendant-Intervenors state that paragraph 44 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 44.

45. Defendant-Intervenors deny the allegation in paragraph 45 that the laws of Indiana, Kansas, and Wisconsin are "similar" to Senate Bill14. Defendant-Intervenors state that paragraph 45 is comprised of legal conclusions and arguments to which no answer is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 45.

46. Defendant-Intervenors specifically deny that a decision by this Court to withhold preclearance would present any constitutional issues or concerns. Defendant-Intervenors state that paragraph 46 is comprised of legal conclusions and arguments to which no answer

is required. To the extent any answer is required, Defendant-Intervenors deny the allegations in paragraph 46.

PRAYER FOR RELIEF

Wherefore, Defendant-Intervenors respectfully request that the Court enter a Judgment:

1. Ordering Plaintiff, as a threshold matter, to amend its Complaint or otherwise submit a clear statement to this Court explaining the law and practice in Texas, prior to the enactment of Senate Bill 14, with regard to persons identifying themselves at the polls when they seek to cast a ballot, so as to clearly identify the precise scope of the voting changes at issue in this litigation, *see McCain v. Lybrand*, 465 U.S. 236, 249, 251 (recognizing that "the preclearance procedures mandated by § 5 of the Voting Rights Act focus entirely on *changes* in election practices" and that "the structure, purpose, history, and operation of § 5" require covered jurisdictions to submit voting changes for preclearance in an "'unambiguous and recordable manner'"); 28 C.F.R § 51.27(c);

2. Ordering Plaintiff, as a threshold matter, to amend its Complaint or otherwise submit a clear statement to this Court identifying all of the voting changes occasioned by Senate Bill 14 related to the implementation of a photo ID requirement in Texas, 28 C.F.R. § 51.22(a)(2) (requirement that related voting changes be reviewed simultaneously under Section 5);

3. Dismissing Plaintiff's Complaint with prejudice;

4. Denying Plaintiff's request for a declaratory judgment, including but not limited to its request for a declaration that the voting changes occasioned by Senate Bill 14, for which preclearance is sought, neither have the purpose nor the effect of denying or abridging the

right to vote on account of race or color, or membership in a language minority group, and Plaintiff's request that Senate Bill 14 may take effect;

5. Awarding Defendant-Intervenors reasonable attorney's fees, litigation expenses (including expert witness fees and expenses), and costs; and

6. Granting Defendant-Intervenors such other relief as the Court deems appropriate.

Dated: March 12, 2011

Respectfully submitted,

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