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,

/s/ Mark A. Posner
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