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 the MEXICAN AMERICAN LEGISLATIVE CAUCUS OF THE TEXAS HOUSE OF REPRESENTATIVES, Proposed Defendant-Intervenors.	Case No. 1:12-cv-00128 RMC-DST-RLW

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANTS

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 submit this memorandum in support of their motion to intervene as defendants in this lawsuit. The instant suit was brought by the State of Texas requesting preclearance, under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, for the voting law changes occasioned by Senate Bill 14, enacted by the Texas Legislature in 2011.

Applicants are entitled to intervene as a matter of right, pursuant to Rule 24(a) of the Federal Rules of Civil Procedure. Together, the Texas NAACP and MALC represent the interests of Texas' two largest minority voting groups – namely, African-American and Latino

citizens – both of whom are expressly protected by the Voting Rights Act. Since these groups have an interest in ensuring that Texas does not implement legislation whose purpose and effect is to disproportionately burden the right to vote of African-American and Latino citizens, Applicants have a cognizable interest in opposing Texas' request for a Section 5 declaratory judgment here. Furthermore, Applicants have a broader interest in ensuring that Section 5 of the Voting Rights Act continues to serve as a bulwark against discriminatory voting laws and is not narrowed in the manner that Texas has proposed in its Complaint in this case. In light of these substantial interests, the timely nature of this motion, and the fact that their members may not be adequately represented by the Attorney General, the Applicants should be entitled to intervene as a matter of right.

Alternatively, in the event that Applicants are not granted intervention as a matter of right, they should be granted permissive intervention under Rule 24(b)(2). This Court has routinely permitted groups that represent the interests of minority voters to intervene as defendants in Section 5 declaratory judgment actions that affect their members' voting rights. Moreover, permitting Applicants to intervene here would neither delay nor prejudice the orderly adjudication of Texas' claims. This Court should therefore permit Applicants to intervene.

Finally, it is important to note at the outset that both the Texas NAACP and MALC recently have been granted intervention in another Section 5 declaratory judgment action

currently pending in the District of Columbia District Court.[1] Intervention also has been granted to other groups in Section 5 cases within the two years.[2]

BACKGROUND

I. Instant Lawsuit

On January 24, 2012, the State of Texas filed the instant declaratory judgment action seeking Section 5 preclearance for certain voting changes occasioned by Senate Bill 14, enacted by Texas on May 27, 2011. S.B. 14, 2011 Leg. Sess. 82(R) (TX. 2011) ("Senate Bill 14").

Under Section 5, whenever a covered State or county "shall enact or seek to administer" a change in a voting practice or procedure, it must obtain federal preclearance by demonstrating to this Court (via declaratory judgment action), or to the Attorney General (via administrative proceeding), that the voting change "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or [membership in a language minority group]." 42 U.S.C. § 1973c(a). A Section 5 covered jurisdiction may not implement a voting change unless and until preclearance is obtained. *Clark v. Roemer*, 500 U.S. 646, 652 (1991) ("A voting change in a covered jurisdiction will not be effective as law until and unless cleared pursuant to [either a judicial or administration preclearance proceeding].") (internal quotation marks and citations omitted).

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[1] *Texas v. United States*, No. 1:11-cv-1303 (D.D.C. Sep. 8, 2011, ECF No. 32) (granting permissive intervention to the Texas NAACP and MALC in Section 5 declaratory judgment action regarding Texas state redistricting plans).

[2] *Florida v. United States*, No. 1:11-cv-1428 (D.D.C. Oct. 19, 2011, ECF No. 42) (granting permissive intervention to three intervenor groups, one of which included the Florida State Conference of the NAACP, in a Section 5 declaratory judgment action regarding Florida voting changes); *Texas v. United States*, No. 1:11-cv-1303 (D.D.C. Aug. 16, 2011 & Sep. 8, 2011, ECF Nos. 11 & 32) (granting permissive intervention to groups in addition to the Texas NAACP and MALC in Texas redistricting case) *Georgia v. Holder*, No. 1:10-cv-01062 (D.D.C. Jul, 7, 2010, ECF No. 6) (granting permissive intervention to the Georgia State Conference of NAACP and others in Section 5 declaratory judgment action regarding a Georgia voting change).

Texas law already establishes a procedure for voters to properly identify themselves at the polls in order to cast a ballot. Tex. Elec. Code §§ 63.001, 63.008. Senate Bill 14 makes significant changes to the existing law, severely limiting the identification procedure by requiring use of one of the following types of voter identification:

- A Texas driver's license;
- A personal identification card issued by the Texas Department of Public Safety and featuring the voter's photograph;
- An election identification certificate (this is a new form of state photo identification created by this legislation);
- A U.S. military identification card featuring the voter's photograph;
- A U.S. citizenship certificate featuring the voter's photograph;
- A U.S. passport; or
- A concealed handgun permit issued by the Texas Department of Public Safety. *Id.*

The State of Texas initially submitted Senate Bill 14 to the Department of Justice ("DOJ") for preclearance on July 25, 2011. Complaint ¶ 12 (ECF No. 1). On September 23, 2011, DOJ informed the Texas Director of Elections that the information provided in the State's preclearance submission was insufficient to satisfy the State's burden of showing that the new voter ID requirement was nondiscriminatory in both purpose and effect; accordingly, the Department requested additional information. *Id.* at ¶ 13. On October 4, 2011, the State responded to DOJ by providing some of the requested information. *Id.* at ¶ 14. On November 16, 2011, DOJ responded asking Texas to provide the available information which DOJ previously had requested from the State but which Texas had not provided. *Id.* at ¶ 15. On January 12, 2012, Texas responded by providing additional data. *Id.* at ¶ 16. During this time

frame, the Texas NAACP (together with the organizations that represent it in this litigation, the Lawyers' Committee for Civil Rights Under Law and the Brennan Center for Justice) submitted two lengthy comment letters to DOJ, dated September 14, 2011, and November 16, 2011, and a shorter comment letter dated March 2, 2012, advocating that DOJ not grant Section 5 preclearance to Senate Bill 14.[3] On January 24, 2012, the State of Texas filed the instant lawsuit. ECF No. 1.

The right to vote is of fundamental importance in a democracy. Senate Bill 14, if enforced, would prevent many Texans from voting. African Americans and Latinos are disproportionately likely to be among those kept from the polls by this restrictive law. These minorities are less likely to have one of the forms of identification required by Senate Bill 14 and face greater financial and logistical barriers to obtaining photo identification. By enacting these restrictions, the State of Texas is attempting to erect barriers to the exercise of this most basic civil right. Furthermore, as set forth in its Complaint, the State seeks to substantially water down the protections of the Voting Rights Act in order to obtain preclearance; specifically, the State proposes that this Court adopt unprecedented and radical limitations on the scope of the Section 5 "effect" standard, which would not only affect the resolution of the instant litigation but would also significantly undercut the full enforcement of the Voting Rights Act in the future. Complaint ¶¶ 24-46.

II. Applicants for Intervention

A. Texas State Conference of NAACP Branches

The Texas NAACP is a subsidiary organization of the National Association for the Advancement of Colored People, Inc. ("NAACP"), a national non-profit organization founded in

[3] Copies of the September 14, 2011, November 16, 2011, and March 2, 2012 letters are attached to this Memorandum as Exhibits A, B, and C.

1909 that today has more than 375,000 members and associate branches located throughout the United States. The Texas NAACP was founded in 1936 and is the oldest and one of the largest and most significant organizations promoting and protecting the civil rights of African Americans in Texas. It is headquartered in Austin and has over sixty branches across the State, as well as members in almost every Texas county.

At the national level, state conference level, and local branch level, the NAACP's mission objectives have always included pursuing the elimination of all racial discrimination in the democratic process, seeking enactment and enforcement of federal laws securing civil rights, and taking action to secure the exercise of all persons' constitutional rights. For more than forty years, the NAACP's support of the Voting Rights Act has been central to this mission, in both the legislative and judicial arenas. The organization played a prominent role in advocating for the reauthorization of Section 5 of the Voting Rights Act in 2006 and has participated in numerous lawsuits brought under the Voting Rights Act, as a party, as an intervenor, and as amicus.

Most particularly, as noted in fn. 1 *supra*, the Texas NAACP is an intervenor in the Section 5 litigation currently ongoing regarding Texas' 2011 statewide redistricting plans and, as noted in fn. 2 *supra*, its sister state conferences, the Florida State Conference of the NAACP and the Georgia State Conference of the NAACP, recently were granted intervention in two other Section 5 declaratory judgment actions. In addition, the Texas NAACP was granted intervention to defend the constitutionality of Section 5 in *Northwest Austin Municipal Utility District Number One v. Mukasey*, 557 F. Supp. 2d 221, 230 (D.D.C. 2008), *rev'd on other grounds sub nom., Northwest Austin Municipal Utility District Number One v. Holder*, 557 U.S. 193; the Alabama State Conference of the NAACP intervened to defend the constitutionality of Section 5 in *Shelby County v. Holder*, No. 1:10-cv-651 (D.D.C. Aug. 25, 2010, ECF No. 29); and the

North Carolina State Conference of the NAACP intervened to defend the constitutionality of Section 5 in *LaRoque v. Holder*, No. 1:10-cv-561 (D.D.C. Aug. 25, 2010, ECF No. 24).

B. Mexican American Legislative Caucus of the Texas House of Representatives

MALC is the nation's oldest and largest Latino legislative caucus. MALC is a non-profit organization established to serve the members of the Texas House of Representatives in matters of interest to Texas' Mexican-American community, in order to form a strong and cohesive voice on such matters in the legislative process, including voting rights matters. MALC plays an active role in both legislative and legal initiatives, including (as noted in fn. 1 *supra*) recently intervening in a Section 5 declaratory judgment action in this Court to oppose preclearance of redistricting plans adopted by the State of Texas for Congress and the Texas House of Representatives.

MALC's thirty-nine members are registered voters in Texas and most are elected from districts that are majority Latino in citizen voting age population and in registered voters. The large majority of MALC members are Latinos, *i.e.*, persons protected by the provisions of the Voting Rights Act, including Section 5 of the Act. 42 U.S.C. § 1973b(f)(1) ("The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope"); 42 U.S.C. § 1973l(b)(3) (defining "language minorities" and "language minority group" to include "persons who are . . . of Spanish heritage").

ARGUMENT

I. Applicants Should Be Permitted to Intervene to Oppose Section 5 Preclearance

A. Intervention is Routinely Granted in Section 5 Declaratory Judgment Actions

It is well established that "[p]rivate parties may intervene in Section 5 actions" under Rule 24. *Georgia v. Ashcroft*, 539 U.S. 461, 477 (2003). The District Court for the District of Columbia has regularly and routinely granted Rule 24 intervention in Section 5 declaratory judgment actions, such as the instant case, to organizations that are directly impacted by the voting changes for which Section 5 preclearance is being sought, and who seek to intervene as defendants to oppose preclearance, so long as the intervention application is timely. Indeed, as noted at the outset of this memorandum, intervention was recently granted to these very Applicants in another Section 5 declaratory judgment action pending in the District of Columbia District Court, and has been granted to other applicants in that case and to applicants in other Section 5 cases in the past two years.

These rulings allowing intervention follow a long line of authority granting intervention in Section 5 declaratory judgment actions to parties who wish to oppose preclearance. *See Georgia v. Ashcroft*, 539 U.S. at 477; *City of Lockhart v. United States*, 460 U.S. 125, 129 (1983); *Bossier Parish Sch. Bd. v. Reno*, 157 F.R.D. 133, 135 (D.D.C. 1994); *Texas v. United States*, 802 F. Supp. 481, 482 n.1 (D.D.C. 1992); *County Council of Sumter County v. United States*, 555 F. Supp. 694, 697 (D.D.C. 1983); *Busbee v. Smith*, 549 F. Supp. 494, 518 (D.D.C. 1982), *aff'd* 459 U.S. 1166 (1983); *City of Port Arthur v. United States*, 517 F. Supp. 987, 991 n.2 (D.D.C. 1981); *City of Richmond v. United States*, 376 F. Supp. 1344, 1349 n.23 (D.D.C. 1974), *remanded on other grounds*, 422 U.S. 358 (1975); *Beer v. United States*, 374 F. Supp. 363, 367 n.5 (D.D.C. 1974), *remanded on other grounds*, 425 U.S. 130, 133 n.3 (1976).

B. Applicants Should Be Granted Intervention as of Right

Courts have long favored "a liberal application in favor of permitting intervention." *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967). *See also American Horse Prot. Ass'n, Inc., v. Veneman*, 200 F.R.D. 153, 157 (D.D.C. 2001) (intervention standard is "liberal and forgiving"); *Wilderness Soc. v. U.S. Forest Service*, 630 F.3d 1173, 1179 (9th Cir. 2011) (construing Rule 24 "broadly in favor of proposed intervenors . . . because a liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts") (internal quotation marks and citations omitted).

Federal Rule of Civil Procedure 24(a) sets forth the requirements for intervention as of right. It states, in relevant part:

> On timely motion, the court must permit anyone to intervene who: . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

The Court must therefore consider the following four factors enumerated in Rule 24(a)(2): (1) timeliness; (2) the Applicants' interest in the transaction which is the subject of the action; (3) whether Applicants are so situated that the disposition of the action may as a practical matter impair or impede their ability to protect that interest; and (4) whether Applicants' interest is adequately represented by the existing parties. *See Jones v. Prince George's County*, 348 F.3d 1014, 1017 (D.C. Cir. 2003). Applicants satisfy all four factors required to intervene under Rule 24(a)(2).

The D.C. Circuit also has held that a party seeking to intervene as of right as a defendant must satisfy the basic standing requirements of Article III of the Constitution. *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 732-33 (D.C. Cir. 2003). *But see Roeder v. Islamic*

Republic of Iran, 333 F.3d 228, 233 (D.C. Cir. 2003) (questioning whether applicants to intervene need establish standing since "the standing inquiry is directed at those who invoke the court's jurisdiction," and holding that "any person who satisfies Rule 24(a) will also meet Article III's standing requirement."). To the extent that a separate standing inquiry is relevant here, Applicants satisfy this as well.

1. Applicants' Motion to Intervene Is Timely

Applicants' motion to intervene in the instant Section 5 declaratory judgment action is timely. Defendant has not yet filed an Answer, no scheduling order has been entered, no discovery has been undertaken, no dispositive motions have been filed, no dispositive orders have been entered, and no trial date has been set. Moreover, Applicants seek to participate in the case on the same schedule as the other parties. Granting intervention therefore would not cause any delay in the trial of the case nor would it prejudice the rights of any existing party. This Court has permitted intervention much later in the litigation process on multiple occasions. *See, e.g.*, *Nationwide Mut. Ins. Co. v. Nat'l REO Mgmt., Inc.*, 205 F.R.D. 1, 6 (D.D.C. 2000) (finding intervention motion timely where six months had elapsed since filing of lawsuit); *Bossier Parish Sch. Bd.*, 157 F.R.D. at 135 (permitting intervention in Section 5 declaratory judgment action on the same day the court held its first scheduling conference); *Council of Sumter County, SC*, 555 F. Supp. at 697 (permitting intervention in Section 5 declaratory judgment action at the close of discovery and on the eve of argument on motions for summary judgment).

2. Applicants Have a Substantial Interest in the Underlying Litigation

By permitting the involvement of "as many apparently concerned persons as is compatible with efficiency and due process," courts apply a "liberal approach" in determining the sufficiency of proposed intervenors' interest under Rule 24(a). *S. Utah Wilderness v. Norton,*

No. 01-2518, 2002 WL 32617198, *5 (D.D.C. June 28, 2002) (citation omitted). To demonstrate a sufficient "interest" in the litigation, prospective intervenors must show a "direct and concrete interest that is accorded some degree of legal protection." *Diamond v. Charles*, 476 U.S. 54, 75 (1986).

The Texas NAACP and MALC have a direct and concrete interest in preventing the preclearance of the voting changes occasioned by Senate Bill 14. Even the State's own data indicates that African-American and Latino voters in Texas are less likely than white voters to possess the kinds of photo IDs required for voting under Senate Bill 14. Thus, if Senate Bill 14 is granted preclearance, members of the Texas NAACP and MALC will have less opportunity to participate in the political process. *See County Council of Sumter County*, 555 F. Supp. at 696-97 (permitting intervention of African Americans registered to vote, in challenge to change in voting law, in light of their local perspective). The interests of the legislators who are members of MALC are also threatened. As individuals elected by persons specifically protected by Section 5, they will be directly injured by the State's efforts to implement voter identification requirements that effectively deny Latino citizens a nondiscriminatory opportunity to elect representatives of their choice.

The interests that the Texas NAACP and MALC seek to protect also are clearly germane to the organizations' purposes, and this litigation does not require any special participation by the Texas NAACP's or MALC's individual members, except to the extent that certain members of the Texas NAACP and/or MALC may be called to testify regarding the factual issues presented by the application of Section 5 to Senate Bill 14.

3. Disposition of this Case May Impair Applicants' Interests

In addition to demonstrating an interest in the underlying litigation, Applicants must show that their interest "*may*" be impaired or impeded by the disposition of the action. Fed. R. Civ. P. 24(a)(2) (emphasis added). In interpreting this requirement, the D.C. Circuit has held that this factor "look[s] to the practical consequences of denying intervention, even where the possibility of future challenge to the regulation remains available." *Nat. Res. Def. Council v. Costle,* 561 F.2d 904, 909 (D.C. Cir. 1977) (internal quotation marks omitted).

The State of Texas is currently precluded by Section 5 from administering the voting changes at issue in the instant litigation. However, if preclearance is granted by this Court, the voter identification changes contained in Senate Bill 14 will be implemented. Because Section 5 itself provides that this Court is the *only* court that may decide whether a voting change violates Section 5, Applicants have no other recourse to prevent the immediate implementation of these voting changes. Applicants' interests with regard to Senate Bill 14 will thus clearly be impaired or impeded by this action should preclearance be granted.

4. The Existing Parties Do Not Adequately Represent the Interests of the Applicants

Finally, Rule 24(a)(2) requires that Applicants show that existing representation "may be" inadequate to protect their interest. *Nat. Res. Def. Council,* 561 F.2d at 911 (quoting *Trbovich v. United Mine Workers,* 404 U.S. 528, 538 n.10 (1972)).

The Attorney General – the statutory defendant in a Section 5 declaratory judgment action – represents the interests of the federal government and the public at large. However, courts in this Circuit have "often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals,* 322 F.3d at 736 & n.9 (citing cases). In *Nat. Res. Def. Council,* for example, the D.C. Circuit held that the Environmental

Protection Agency ("EPA") could not adequately represent a private advocacy organization's interests despite the fact that both shared a "general agreement . . . that the [challenged] regulations should be lawful." 561 F.2d at 912. That general agreement, the court held:

> does not necessarily ensure agreement in all particular respects about what the law requires. Without calling the good faith of EPA into question in any way, appellants may well have honest disagreements with EPA on legal and factual matters . . . . Good faith disagreement, such as this, may understandably arise out of the differing scope of EPA and appellants' interests: EPA is broadly concerned with implementation and enforcement of the settlement agreement, appellants are more narrowly focused on the proceedings that may affect their industries. Particular interests, then, always "*may* not coincide," thus justifying separate representation.

Id., quoting *Nuesse*, 385 F.2d at 703 (emphasis added; footnote omitted). *See also Dimond v. Dist. of Columbia*, 792 F.2d 179, 193 (D.C. Cir. 1986); *Smuck v. Hobson*, 408 F.2d 175, 181 (D.C. Cir. 1969).

The same rationale applies here. Applicants likely have a different perspective than that of the Attorney General regarding the application of Section 5 to the voting requirements at issue. *See Georgia v. Ashcroft*, 195 F. Supp. 2d, 25, 72-73 (D.D.C. 2002), *aff'd in relevant part*, 539 U.S. at 476-77 (permitting defendant-intervenors to challenge preclearance of statewide redistricting plans, notwithstanding Attorney General's non-opposition to preclearance).[4]

[4] There are numerous other instances in which intervention by private citizens in cases brought under the Voting Rights Act has been particularly valuable because of different legal positions taken by the United States and the intervening minority voters. *See*, *e.g.*, *Young v. Fordice*, 520 U.S. 273, 281 (1997) (private plaintiffs challenged lack of preclearance of certain changes to Mississippi's voter registration procedures and won reversal of lower court's decision, although United States opted not to appeal); *Blanding v. DuBose*, 454 U.S. 393, 398 (1982) (minority plaintiffs appealed and prevailed in the Supreme Court in suit challenging lack of preclearance after United States dropped out); *City of Lockhart v. United States*, 460 U.S. 125, 129-30 (1983) (defendant-intervenor presented sole argument in the Supreme Court regarding the scope of Section 5 while the United States stood in support of appellant); *County Council of Sumter County*, 555 F. Supp. at 696 (minority intervenors and United States took conflicting positions

Indeed, the Attorney General does not have the same stake in this matter as members of the Texas NAACP and MALC who are covered under and protected by Section 5 of the Voting Rights Act – citizens who have experienced and continue to experience discrimination in the State of Texas that impedes their ability to participate fully in the political process.

Even to the extent that Applicants' interests and Defendant's interests coincide, Applicants contribute a local perspective regarding the purpose and effect of the voting changes in a manner that the Attorney General cannot. For example, the Texas NAACP's and MALC's members include residents and voters of Texas who are protected by Section 5 of the Voting Rights Act who can speak directly to the real world impact of the voter identification restrictions set forth in Senate Bill 14. *See, e.g.*, *Georgia v. Ashcroft*, 539 U.S. at 477 (upholding this Court's grant of private parties' motion to intervene where intervenors' interests were not adequately represented by existing parties); *County Council of Sumter County*, 555 F. Supp. at 696-97 & n.2 (permitting intervention in light of African-American intervenors' local perspective and noting possibility of inadequate representation by United States); *Nat. Res. Def. Council*, 561 F.2d at 912-13 (intervention granted to environmental group whose "more narrow and focused [*sic*]" interest would "serve as a vigorous and helpful supplement to EPA's defense" and, "on the basis of their experience and expertise in their relevant fields, appellants can reasonably be expected to contribute to the informed resolutions of . . . questions when, and if, they arise.").

Moreover, as discussed at length above, this Court commonly grants intervention to minority voters and officeholders, such as those represented by the Texas NAACP and MALC, in Section 5 preclearance actions.

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regarding application of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, to Section 5 preclearance process).

5. Applicants Satisfy the Requirements of Article III Standing

Because Applicants satisfy the requirements for intervention of right under of Rule 24(a), they likewise satisfy any applicable standing requirements. As previously noted, the D.C. Circuit has held that "any person who satisfies Rule 24(a) will also meet Article III's standing requirement." *Roeder*, 333 F.3d at 233. Moreover, as discussed above, Applicants face direct injury resulting from Texas' pending voting changes, which would be redressed by a denial of preclearance.

The Texas NAACP and MALC also have Article III standing to represent the interests of their members under *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (requiring showing of injury-in-fact, causation, and redressibility) and *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977) (organization has standing to sue on behalf of its members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit").

C. In the Alternative, This Court Should Grant Permissive Intervention Under Rule 24(b)(1)

Alternatively, if Applicants are not granted intervention as of right, this Court should grant permissive intervention pursuant to Federal Rule of Civil Procedure 24(b)(1). Rule 24(b)(1) permits intervention "upon timely application" when an applicant "has a claim or defense that shares with the main action a common question of law or fact." In addition, courts consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. *Massachusetts v. Microsoft Corp.*, 373 F.3d 1199, 1235 (D.C. Cir. 2004).

Applicants satisfy the requirements of Rule 24(b)(1). While Applicants' perspectives on certain factual and legal issues will surely differ from those of Plaintiff and Defendant, the

fundamental questions of law and fact that Applicants seek to litigate are no different from the questions already presented in the State of Texas' Complaint. Specifically, Applicants contend that the voter identification requirements that Texas seeks to implement via Senate Bill 14 would have a retrogressive effect on minority voters, and that Texas will not be able to satisfy its burden of demonstrating the absence of a discriminatory purpose thus violating Section 5 of the Voting Rights Act. This position presents issues of law and fact in common with the claims and defenses of the instant litigation. *See, e.g., Miller v. Silbermann*, 832 F. Supp. 663, 673-74 (S.D.N.Y. 1993) (allowing permissive intervention where intervenors' defense "raises the same legal questions as the defense of the named defendants").

Granting Applicants' motion to intervene at this stage would neither delay nor prejudice the adjudication of the rights of the original parties. As described earlier, Defendant has not yet filed an Answer, no scheduling order has been entered, no discovery has been undertaken, no dispositive motions have been filed, no dispositive orders have been entered, no trial date has been set, and Applicants seek to participate in the case on the same schedule as the other parties. Granting Applicants' motion therefore would not delay this litigation. Furthermore, neither Plaintiff nor Defendant would be prejudiced as a result of this Court permitting intervention. Applicants do not propose to add a counterclaim, expand the questions presented by the Complaint, or raise any additional affirmative defenses.

Permissive intervention is particularly warranted where, as here, Applicants' unique knowledge and experiences may help contribute to the proper development of the factual issues in the litigation. *See, e.g., Johnson v. Mortham*, 915 F. Supp. 1529, 1538-39 (N.D. Fla. 1995) (NAACP permitted to intervene because the organization's unique perspective and expertise would aid court's constitutional inquiry); *Miller*, 832 F. Supp. at 674 (permitting intervention

where applicant's "knowledge and concern" would "greatly contribute to the Court's understanding").

CONCLUSION

For the above and foregoing reasons, this Court should permit Applicants to intervene in this action as party defendants.

Dated: March 12, 2011

Respectfully submitted,

/s/ Mark A. Posner
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Statement Pursuant to Local Rule 7(m)

Counsel for Texas NAACP and MALC have contacted counsel for Plaintiff and have attempted to contact counsel for Defendants in a good faith effort to determine whether the existing parties oppose this motion. Counsel for the State of Texas has indicated his opposition to this intervention. Based upon Defendant's response to the Kennie-Intervenors' Motion to Intervene, it is the understanding of counsel for Texas NAACP and MALC that the Attorney General will not oppose permissive intervention in this case by Texas NAACP and MALC.

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