

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,

*Plaintiff,*

v.

ERIC H. HOLDER, JR. in his  
Official capacity as Attorney General  
Of the United States,

*Defendant.*

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Case No. 1:12-cv-00128  
RMC-DST-RLW

**PROPOSED KENNIE DEFENDANTS-INTERVENORS’  
MOTION TO INTERVENE AS DEFENDANTS**

Pursuant to Federal Rules of Civil Procedure 24(a) and 24(b), Eric Kennie, Anna Burns, Michael Montez, Penny Pope, Marc Veasy, Jane Hamilton, David de la Fuente, Lorraine Birabil, Daniel Clayton, and Sergio DeLeon (collectively “Kennie Proposed Defendant-Intervenors” or “Proposed Defendant-Intervenors”) hereby move to intervene as Defendants in this action in order to assert positions and arguments not likely to be addressed by other parties. The applicants have a direct interest in the subject matter of this action and the claims brought by the Plaintiff. The Proposed Defendant-Intervenors potentially will be impaired and impeded in the protection of their rights by the disposition of this case.

The Proposed Defendant-Intervenors aver that if intervention is granted they will, among other things: (i) participate in the action on the schedules which will be

established for the existing parties; (ii) avoid delays or unnecessary duplication of effort in areas satisfactorily addressed and represented by the existing Defendant, to the extent possible; and (iii) coordinate any pretrial and trial proceedings with the existing Defendant to the extent possible.

As grounds for this motion, and as more fully explained in the memorandum in support of this motion filed herewith, the Proposed Defendant-Intervenors show the court the following:

1. This action by the State of Texas seeks a declaratory judgment for preclearance under Section 5 of the Voting Rights Act. The complaint also questions whether Section 5 unconstitutionally exceeds Congressional authority.

2. The Proposed Defendant-Intervenors seek to intervene as a matter of right pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure, or, in the alternative, to intervene by permission pursuant to Fed. R. Civ. Proc. Rule 24(b). With regard to intervention as of right, Proposed Defendant-Intervenors claim an interest in the subject of this litigation including the potential loss of effective minority representation, the defense of allegations that Section 5 of the Voting Rights Act violates the Fifth, Fourteenth and Fifteenth Amendments, and an interest in the upholding of the constitutionality of Section 5 of the Voting Rights Act, a vital tool in protecting minority voting rights.

3. The Complaint was filed on January 24, 2012. An answer to the suit has not yet been filed. This motion is being filed less than a month after the lawsuit was filed. Counsel for the Proposed Defendant-Intervenors can comply with any discovery deadlines set by the Court without causing any delay in the litigation. Thus, intervention is timely and will not delay or prejudice the adjudication of the rights of the original parties.

4. Proposed Defendant-Intervenors are all citizens and residents of Texas. Proposed Defendant-Intervenor Eric Kennie resides in Austin, Travis County, Texas and Proposed Defendant-Intervenor Anna Burns resides in Ft. Worth, Tarrant County, Texas. Defendant-Intervenor Kennie is registered to vote but do not possess an approved photo identification as required under the law for which preclearance is sought. Defendant-Intervenor Kennie also lacks the means to obtain such identification. Proposed Defendant-Intervenor Anna Burns posses an acceptable form of photo identification but, if the law is implemented, will nevertheless be prohibited from voting because the voter registration database contains a different form of her name. Numerous minority citizens, especially Latino, suffer from having incorrect or incomplete names listed on the voter rolls that also do not match their photo identification. Proposed Defendant-Intervenor Kennie is African-American and Proposed Defendant-Intervenor Burns is Latino. Proposed Defendant-Intervenor Michael Montez is an elected Latino Constable in Galveston County, Texas, although he seeks to intervene in his individual capacity.

Proposed Defendant-Intervenor Penny Pope is an elected African-American Justice of the Peace in Galveston County, Texas, although he seeks to intervene in his individual capacity. Proposed Defendant-Intervenors Montez and Pope represent districts with significant minority voter populations. Given recent events in Galveston County including a devastating Hurricane, many of these minority voters are likely to lose their right to vote under the photo identification law proposed. Proposed Defendant-Intervenor Marc Veasey is an elected African-American State Representative from North Texas, although he seeks to intervene in his individual capacity. Proposed Defendant-Intervenors Jane Hamilton, David de la Fuente, Lorraine Birabil, Daniel Clayton, and Sergio DeLeon are citizens of Texas who are either Latino or African-American. Proposed Defendant-Intervenors Marc Veasy, Jane Hamilton, David de la Fuente, Lorraine Birabil, Daniel Clayton, and Sergio DeLeon contend that the photo identification law, if allowed to be implemented, will severally damage the ability of minority candidates to have a meaningful voice in Texas elections. All of the proposed Defendant-Intervenors consider the Voting Rights Act of 1965 to be an essential piece of federal civil rights legislation that has historically and continues to provide significant protection for their voting rights. In their experience, Section 5 of the Voting Rights Act is a fundamentally important tool, in Texas and beyond, to guarantee voting rights protection.

5. Proposed Defendant-Intervenors have a direct, substantial and legally protectable interest in the subject matter of this litigation. Proposed Defendant-Intervenors Kennie and Burns will be unlawfully denied the fundamental right to vote if Plaintiffs prevail in this case. Proposed Defendant-Intervenors Kennie and Burns, though citizens, and lawful registered voters in the past, will be denied the right to vote because they are unable to obtain approved photo identification. Proposed Defendant-Intervenors Veasey, Montez and Pope represent minority communities in Texas where a large number of citizens and eligible voters reside. These would-be voters lack the means and/or opportunity to obtain photo identification and therefore, if this suit is successful, will be prohibited by their state government from voting in federal and state elections. African-Americans and Latinos represented by these Proposed Defendant-Intervenors are more likely than Anglos to lack the photo identification required under the subject law. The subject law would be retrogressive and was adopted with a racial intent.

6. Proposed Defendant-Intervenors have another direct, substantial and legally protectable interest in the subject matter of this litigation. Plaintiffs potentially seek to have invalidated, or undermined, a core provision of the Voting Rights Act—a provision that was just recently reauthorized for 25 years by the United States Congress. That provision offers Proposed Defendant-Intervenors assurance that any voting changes proposed and adopted in Texas will be subject to review by this Court or by the United States Attorney General to ensure that such changes are not enacted with retrogressive

intent or do not create retrogressive consequences for their voting rights. As long as Texas is still covered by Section 5 as it has been historically interpreted, Proposed Defendant-Intervenors will be able to seek judicial relief from a federal district court to prevent the implementation of any changes affecting voting that have not been precleared or approved by the Attorney General or this Court. Furthermore, Proposed Defendant-Intervenors will know that voting changes not submitted for preclearance are unenforceable. Plaintiffs request this Court adopt an interpretation of Section 5 that would harm the interests of Defendant-Intervenors.

7. If Plaintiff is successful in attacking the constitutionality of Section 5, Proposed Defendant-Intervenors and others in Texas will be forced to bear the burden of bringing litigation on their own in order to protect their voting rights. More generally, if Plaintiff is successful, invalidation or re-interpretation of Section 5 would harm the federally-protected voting rights not only of Proposed Defendant-Intervenors, but of all similarly-situated minority voters in areas covered by Section 5.

8. The interests of Proposed Defendant-Intervenors may not be adequately represented by the Defendant in light of the nature of the complaint in this action. The Defendant is bound by institutional constraints that are likely to direct its strategy in litigation, including the arguments proffered or the type of evidence presented. Indeed, this Court has recognized that government entities often cannot adequately represent the interests of private parties. *See, e.g., Dimond v. District of Columbia*, 792 F.2d 179, 192

(D.C. Cir. 1986) (granting intervention of a private party seeking to protect its financial interest despite presence of government entity representing general public interest); *see also Natural Resources Defense Council, Inc. v. United States Environmental Protection Agency*, 99 F.R.D. 607, 610 n.5 (D.D.C. 1983) (granting intervention of private industry party in recognition that EPA representation of public interest might not always coincide with interest of the industry).

9. The Defendant does not have the same stake in this matter as citizens of a state under the coverage of Section 5—citizens who have and continue to experience discrimination that impedes their ability to fully participate in the political process.

10. In the alternative, the Proposed Defendant-Intervenors seek to intervene by permission pursuant to Fed. R. Civ. Proc. Rule 24(b) (2). Proposed Defendant-Intervenors opposition to preclearance of this law has issues of law and fact in common with the claims and defenses in this action. Proposed Defendant-Intervenors' defense of the historical interpretation of Section 5, to the extent that it prohibits changes to any voting qualification, prerequisite, standard, practice or procedure have the effect of denying or abridging the right to vote on account of race or color, has issues of law and fact in common with the claims and defenses in this action.

11. Courts have routinely granted intervention to minority voters in voting rights cases, recognizing the significance of such cases on the exercise of fundamental rights. *See, e.g., Georgia v. Ashcroft*, 539 U.S. 461, 477 (2003) (upholding D.C. District

Court's grant of motion to intervene by private parties on grounds that intervenors' interests were not adequately represented by the existing parties).

12. Counsel for the Proposed Defendant-Intervenors have conferred with counsel for the parties in accordance with Local Civil Rule 7(m). Counsel for the Defendant Attorney General Eric Holder indicated the government does not oppose permissive intervention in this case by the Proposed Defendant Intervenors. Plaintiff's counsel has responded that Plaintiff is opposed this Motion.

13. Pursuant to Rules 24(c) and 12(b) of the Federal Rules of Civil Procedure, Proposed Defendant-Intervenors are prepared to file a responsive pleading within seven days of being permitted to intervene.

14. The grounds for this motion are set forth more fully in the memorandum of law filed today with this motion.

WHEREFORE the applicants requests that their motion to intervene as Defendants be granted.

This the 1st day of February, 2012.

Respectfully Submitted,

/s/ Chad W. Dunn

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Attorneys for Proposed Defendant-  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, February 1, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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