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,* and TEXAS LEAGUE OF YOUNG VOTERS EDUCATION FUND, IMANI CLARK, KIESSENCE CULBREATH, DEMARIANO HILL, FELICIA JOHNSON, DOMINIQUE MONDAY, BRIANNA WILLIAMS, *Proposed Defendant-Intervenors.*	Civ. No. 1:12-cv-00128-RMC-DST-RLW

MOTION TO INTERVENE AS DEFENDANTS

Proposed Defendant-Intervenors, the Texas League of Young Voters Education Fund, Imani Clark, KiEssence Culbreath, Demariano Hill, Felicia Johnson, Dominique Monday, and Brianna Williams (collectively, "Proposed Defendant-Intervenors"), by and through their undersigned counsel, hereby submit this Motion to Intervene as of right pursuant to Fed. R. Civ. P. 24(a)(2), the accompanying Statement of Points and Authorities, and Proposed Answer in accordance with Local Civil Rule 7. In the alternative, Proposed Defendant-Intervenors seek permissive intervention pursuant to Fed. R. Civ. P. 24(b)(1). Proposed Defendant-Intervenors seek to intervene in this action to oppose Plaintiff's request for judicial preclearance under Section 5 of the Voting Rights Act ("VRA") of its recently enacted Senate Bill 14 ("voter ID law," "photo ID

law," or "S.B. 14"), and Plaintiff's challenge to the constitutionality of Section 5 of the VRA ("Section 5").

This Motion is made with Proposed Defendant-Intervenors' understanding of this Court's interest in the efficient disposition of the proceedings in this matter. To that end, Proposed Defendant-Intervenors are committed to (i) avoiding delays or the unnecessary duplication of efforts in areas satisfactorily addressed and represented by Defendant or existing Intervenors, to the extent possible; and (ii) abiding by the Order regarding Expedited Discovery, and the deadlines therein, set forth by this Court on March 15.

The grounds for this Motion, more fully described in the accompanying Statement of Points and Authorities, are set forth below:

1. Plaintiff brought this declaratory judgment action under Section 5 of the VRA, as amended, 42 U.S.C. § 1973c, and 28 U.S.C. § 1331 to seek judicial preclearance of a voter ID law affecting the requirements for in-person voting in Texas, even though implementing this law would have a retrogressive effect on minority voters, including students, in Texas, the entirety of which is covered by Section 5. Plaintiffs also challenge the constitutionality of Section 5 of the VRA.

2. Proposed Defendant-Intervenors seek to intervene in a timely fashion. Plaintiff filed its Complaint on January 24, 2012, and this Court granted Plaintiff leave to file its amended Complaint on March 15. Defendant has not yet filed an answer to the amended Complaint. Prior to its January filing, in July 2011, the State of Texas submitted S.B. 14 for administrative preclearance to the Department of Justice ("DOJ"). The preclearance process for S.B. 14 continued on both the administrative and the judicial tracks until March 12, when the DOJ ultimately denied administrative preclearance to

S.B. 14. In effect, the judicial preclearance process was held in abeyance until that administrative determination was made, since a grant of administrative preclearance would have mooted this action. A motion to intervene in this action would have been premature before the possibility of Texas's securing administrative preclearance was foreclosed. Proposed Defendant-Intervenors now submit this Motion and Proposed Answer one week after the DOJ's administrative determination, four days after this Court granted Plaintiff leave to file its amended Complaint and granted the motions to intervene of the Kennie and MALC intervenors, and before Defendants' Answer to the amended Complaint has been filed.

3. The Proposed Individual Defendant-Intervenors are members of a class of persons whom the Voting Rights Act was specifically designed to protect. Proposed Individual Defendant-Intervenors Imani Clark, KiEssence Culbreath, Demariano Hill, Felicia Johnson, Dominique Monday, and Brianna Williams are African-American residents of Texas. The Proposed Individual Defendant-Intervenors are registered voters in Harris and Waller counties; all are students of either Texas Southern University ("TSU") or Prairie View A&M University ("Prairie View," or "PVAMU"), both of which are historically Black universities in Texas.

4. The Proposed Organizational Defendant-Intervenor, the Texas League of Young Voters Education Fund (the "Texas League of Young Voters" or "Texas League"), is a membership organization whose members and constituents are members of a class of persons whom the Voting Rights Act was specifically designed to protect. The Texas branch of the League of Young Voters Education Fund is a nonpartisan, non-profit organization that educates young people about the importance of civic engagement,

voting and the political process, and trains young people to organize their communities around the important issues facing them. The Texas League was founded in 2010 and its mission is to cultivate and encourage civic engagement specifically among young people of color, including through the voting process. The Texas League seeks to fulfill its mission through grassroots organizing, social media outreach, targeted in-person voter education and registration activities, and strategic programs that encourage voter turnout among young people of color. The core constituencies of the Texas League are young people of color, non-college youth, students of color at historically Black colleges and universities, and low-income youth who live throughout the state—particularly in Harris, Waller, Fort Bend, Travis, Leon, Dallas, and Bexar counties. Since its founding, the Texas League has helped thousands of young people of color register to vote.

5. The disposition of this litigation will have a substantial impact on Proposed Defendant-Intervenors' interests, and specifically on their access to the polls on Election Day. Several Proposed Individual Defendant-Intervenors, who have previously voted in Texas without the burdens of S.B. 14, have relied on the state's benchmark practices, which did not require the presentation of one of a small number of acceptable forms of photo ID to be able to vote at polls. Proposed Organizational Defendant-Intervenor, the Texas League, has itself relied on the state's benchmark practice with respect to photo IDs, and its members have relied on the state's benchmark practice of not restricting access to polling stations to those voters who have one of the limited number of S.B 14-compliant photo IDs. Proposed Defendant-Intervenors have a vested interest in protecting their ability to vote in Texas, and in defending the constitutionality of Section 5 of the VRA.

6. Proposed Defendant-Intervenors have a significant interest in preventing the implementation of the Texas voter ID law. The questions of law and fact concerning the legality of the proposed voter ID law and the constitutionality of Section 5 of the Voting Rights Act directly impact the current and future voting rights of Proposed Defendant-Intervenors. As a plurality of the United States Supreme Court observed: "[s]till, racial discrimination and racially polarized voting are not ancient history. Much remains to be done to ensure that citizens of all races have equal opportunity to share and participate in our democratic processes and traditions. . . ." *Bartlett v. Strickland*, 129 S. Ct. 1231, 1249 (2009) (Kennedy, J.). The Supreme Court also recognized that the VRA remains an effective tool in safeguarding the rights of minority voters. *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct. 2504, 2506 (2009) (noting that the "improvements are no doubt due in significant part to the Voting Rights Act itself, and stand as a monument to its success").

7. Courts routinely grant intervention in Section 5 and other voting rights cases to minority voters and organizations representing the interests of voters of color, recognizing that they have a strong interest in voting issues and offer important perspectives that bear on the proper interpretation of Section 5 of the VRA. This is particularly true when the constitutionality of Section 5 is challenged. Courts have also recognized that the interests of minority voters and organizations representing the interests of minority voters may diverge from the positions of institutional parties, such as the United States. Courts have therefore granted intervention to multiple groups of intervenors in a broad range of voting matters, including many recent and on-going declaratory judgment actions. *See, e.g.*, *Florida v. Holder*, No. 1:11-cv-01428, ECF No.

42 (D.D.C. Oct. 19, 2011) (granting several motions to intervene presented by African-American, Latino and other minority voters in action for preclearance of voting changes under Section 5, and challenging the constitutionality of Section 5 of the VRA); *Texas v. United States*, No. 1:11-cv-01303, ECF No. 11 (D.D.C. Aug. 16, 2011) (granting intervention to minority voters in declaratory judgment action to preclear redistricting plan under Section 5 of the VRA); *Georgia v. Holder*, No. 1:10-cv-01062, ECF No. 30 (D.D.C. Aug. 3, 2010) (granting several motions to intervene presented by African-American, Latino and other minority voters in an action for a declaratory judgment on voting changes, and challenging the constitutionality of Section 5 of the VRA); *Shelby Cnty. v. Holder*, No. 1:10-cv-00651, ECF No. 29 (D.D.C. Aug. 25, 2010) (granting several motions to intervene by African-American voters in case challenging the constitutionality of Section 5 of the VRA); *Nw. Austin Mun. Util. Dist. No. One v. Mukasey*, 573 F. Supp. 2d 221, 230 (D.D.C. 2008) (granting several motions to intervene presented by African-American, Latino and other minority voters in case seeking bailout under section 4(a) of the VRA, and challenging the constitutionality of Section 5 of the VRA).[1]

[1] For additional examples of voting rights cases in which motions to intervene by organizations and individuals represented by the NAACP Legal Defense and Educational Fund, Inc. ("LDF") have been granted by this Court, *see La. House of Representatives v. Ashcroft*, No. 02-62 (D.D.C. June 6, 2002) (granting coalition of organizations, African American voters, and other voters' motion to intervene in a Section 5 declaratory judgment action seeking preclearance of redistricting plan; voters were represented by LDF); *Virginia v. Reno,* 117 F. Supp. 2d 46 (D.D.C. 2000) (LDF represented intervening voters); *Beer v. United States*, 374 F. Supp. 363, 367 n.5 (D.D.C. 1974), *vacated on other grounds*, 425 U.S. 130 (1976) (LDF represented intervening voters); *N.Y. State v. United States*, 65 F.R.D. 10, 12 (D.D.C. 1974) (LDF represented intervening organization). The grants of intervention to minority voters in these cases are informed by the holding in *Allen v. State Board of Elections*, which found an implied cause of action for private citizens to bring suits enforcing Section 5 of the VRA because they were beneficiaries of the Act. 393 U.S. 544, 557 (1969) ("[t]he guarantee of § 5 . . . might well prove an empty promise unless the private citizen were allowed to seek judicial enforcement of the prohibition;" LDF represented appellant).

8. Proposed Defendant-Intervenors have a right to intervene because their interests may not be "adequately represented" by existing Defendant, Attorney General Holder. Fed. R. Civ. P. 24(a)(2). A government entity often cannot adequately represent the interests of private parties. *See Dimond v. District of Columbia,* 792 F. 2d 179, 192 (D.C. Cir. 1986) (Proposed Defendant-Intervenors' burden on this point is "not onerous," and is satisfied by a showing that the representation of their interests by the present parties "*may* be inadequate, *not* that representation *will* in fact be inadequate.") (emphases added, internal quotation marks and citation omitted); *see also Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972) (showing burden should be treated as minimal); *accord Natural Res. Def. Council v. Costle*, 561 F.2d 904, 911 (D.C. Cir. 1977); *Georgia v. Ashcroft*, 195 F. Supp. 2d 25 (D.D.C. 2002) (three-judge panel in state redistricting declaratory judgment action granting intervention to African-American voters pursuant to Fed. R. Civ. Proc. 26(a)(2)); Wright, et al., *supra*, § 1909 (an applicant ordinarily should be permitted to intervene as of right "unless it is *clear* that the party will provide adequate representation for the absentee" (emphasis added)). Even "a partial congruence of interests" is insufficient to "guarantee the adequacy of representation." *Fund for Animals*, 322 F.3d 728, 737 (D.C. Cir. 2003). For example, the Department of Justice's analysis of Texas's proposed photo ID law as presented in the submission for administrative preclearance focuses exclusively on the effects that the law would have on Latino registered voters, as the state "provided no data whether African American or Asian registered voters are also disproportionately affected by S.B. 14," *See* Ex. 7 to Motion for Leave to file amended Complaint, Dkt. No. 16, at 3.

9. Proposed Defendant-Intervenors' interests are distinct from those of the Kennie and MALC Defendant-Intervenors. Prior to the proposed implementation of Texas's law, registered student voters could have used—and, in the case of several of the Proposed Individual Defendant-Intervenors, did use—a Texas-issued student ID to vote. Moreover, prior to the passage of Texas's photo ID law, Proposed Individual Defendant-Intervenors planned to vote in what, for all but two of them, would have been their first presidential election since their eighteenth birthdays. However, because S.B. 14 does not recognize college or university-issued photo IDs, even those issued by public Texas universities, as sufficient identification to vote, these students' voting rights are imperiled in Texas, where they live and are registered to vote. Indeed, the effects of S.B. 14 on student voters specifically was debated in the Texas legislature when the law was being considered. S.B. 14, 82nd Legis. Sess., at 15 (Tex. Jan. 26, 2011), http://www.texastribune.org/session/82R/transcripts/2011/1/26/senate/. This demonstrates that the topic was recognized by the legislature as having a particular impact on students. Proposed Defendant-Intervenors can lend the Court both a modern and historical perspective on the voting rights of students in Texas.

10. Finally, counsel for Proposed Defendant-Intervenors have substantial experience in Voting Rights Act litigation, *see, e.g.*, *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct. 2504 (2009) (mixed claim for bailout and constitutional challenge to the 2006 reauthorization of Section 5 of the VRA); *Shelby Cnty. v. Holder*, No. 1:10-cv-00651 (D.D.C.) (constitutional challenge to the 2006 reauthorization of Section 5), Section 5 declaratory judgment actions before three-judge panels in this district (*e.g.*, *Georgia v. Holder*, No. 1:10-cv-01062 (D.D.C.) (mixed claim for preclearance and

constitutional challenge to the application of Section 5 to the State of Georgia), *Florida v. Holder*, No. 1:11-cv-01428 (D.D.C.) (same)); and the congressional record that led both to the initial enactment and subsequent reauthorization of the Act. Counsel's significant experience provides Proposed Defendant-Intervenors with competent, effective representation, and will also very likely benefit the Court in the adjudication of the issues presented in this case.

11. Intervention here is appropriate as of right pursuant to Fed. R. Civ. P. 24(a)(2), or, in the alternative, permissively pursuant to Fed. R. Civ. P. 24(b)(1).

12. Counsel for Defendant Attorney General Eric Holder, and for Defendant-Intervenors, have advised that they do not oppose permissive intervention by Proposed Defendant-Intervenors. Counsel for the State of Texas has advised that it will oppose this motion for intervention.

WHEREFORE, Proposed Defendant-Intervenors respectfully request that their Motion to Intervene as Defendants be granted.

Dated: March 19, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2012, I electronically filed the foregoing with the Clerk of court by using the CM/ECF system which will send a notice of electronic filing to counsel of record who are registered participants of the Courts CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to counsel of record who are not CM/ECF participants as indicated in the notice of electronic filing.

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