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November 8, 2010

Honorable John D. Bates
United States District Court for
The District of Columbia
333 Constitution Avenue Northwest
Washington D.C., 20001

Re: *LaRoque, et al. v. Holder*
No. 1:10-cv-00561-JDB

Dear Judge Bates:

The above-captioned case presents a facial challenge to the constitutionality of Section 5 of the Voting Rights Act. Currently pending before this Court are fully briefed Motions to Dismiss filed by the Government and Defendant-Intervenors. *LaRoque* Doc. Nos. 11, 25. Because time is now of the essence for the reasons discussed below, Plaintiffs request that this Court resolve the pending Motions to Dismiss without oral argument if, as is quite likely, such an expedited resolution is needed to maintain the merits briefing schedule discussed below. We make this request because we believe that any benefits that oral argument might provide would be outweighed by any delay entailed in having such an argument.

In *Shelby County v. Holder*, No. 1:10-cv-00651-JDB, which also presents a facial challenge to the constitutionality of Section 5, this Court recently entered a briefing schedule for summary judgment that culminates in a motions hearing on February 2, 2011. *Shelby County* Doc. No. 46. The Plaintiffs here have also filed a Motion for Summary Judgment, *LaRoque* Doc. No. 23, but the responsive briefing has been stayed pending this Court's resolution of the Motions to Dismiss, *LaRoque* Minute Order (Sept. 16, 2010). Consequently, in order for the merits of this case to be briefed and resolved in a time-frame roughly contemporaneous to that established for *Shelby County*, resolution of the Motions to Dismiss needs to be done in the very near future (obviously assuming such resolution is favorable to Plaintiffs and there remains a case to adjudicate). And it is quite important that this case be resolved on the merits contemporaneous with *Shelby County* in the spring of 2011.

First, Plaintiffs here are advancing an important, separate argument for Section 5's unconstitutionality that has not been advocated by Shelby County in its challenge. This is the argument that the 2006 amendments to Section 5 both (1) independently render Section 5 impermissible enforcement legislation under the Reconstruction Amendments and (2) affirmatively violate the Constitution's nondiscrimination guarantees. See *LaRoque* Doc. No. 23

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(SJ Memo.) at 25-45; *see also* Doc. No. 1 (Complaint) ¶¶ 24-26, 32-37. Shelby County does not advance this argument. Thus, if this Court, as well as any appellate court, is to have an opportunity to consider all serious merits challenges to Section 5, it is necessary that this case be before it at roughly the same time that *Shelby County* is submitted for resolution. It makes no sense from anyone's perspective to have the Court consider one potential argument (*i.e.*, Shelby County's and our argument that the mere *extension* of Section 5 *unchanged* in 2006 is not permissible enforcement legislation) without considering the separate, albeit related, argument that the *expansion* caused by the 2006 substantive amendments independently demonstrates the invalidity of Section 5 as enforcement legislation and also affirmatively violates the Constitution's race-neutrality guarantees. Most obviously, it would clearly be contrary to the public interest to have the Court uphold the unchanged extension of Section 5, only to later, in our case, invalidate Section 5 because of the 2006 amendments.

In all events, the immediate pendency of redistricting requires judicial resolution of Section 5's constitutionality in early 2011 (which is presumably why the *Shelby County* briefing and argument schedule was designed to enable such timely resolution). Any resolution by this Court of Section 5's constitutionality after the spring of 2011 would preclude Supreme Court (or other final appellate) review of Section 5's validity prior to the 2012 elections, which will use the new district lines derived from the 2010 Census. The public interest is obviously ill-served by an unnecessarily belated invalidation of Section 5 after the district lines have been used in 2012 elections, given the uncertainty created by remedying districts affected by Section 5's unconstitutionality in the middle of a decade, after one set of elections has already been held. Thus, prompt resolution of all potentially meritorious challenges to Section 5's constitutionality prior to the 2012 elections is particularly needed, and any delayed invalidation of Section 5 (on grounds not presented by *Shelby County*) would be particularly disruptive.

We note finally that the extended, sophisticated briefing on the Motions to Dismiss should provide a fully adequate basis for resolving the issues presented therein without the need for oral argument. Of course, if this Court believes that it can decide the Motions to Dismiss in the time-frame alluded to above even with oral argument, that would be fully consistent with Plaintiffs' request.

For these reasons, we respectfully request that this Court resolve the pending Motions to Dismiss in the near future, even if this necessitates foregoing oral argument.

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Respectfully submitted,

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