

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
NORTHWEST AUSTIN MUNICIPAL	)	
UTILITY DISTRICT NUMBER ONE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:06-CV-1384
	)	
ALBERTO GONZALES,	)	Three-Judge Court (PLF, DST, EGS)
Attorney General of the United States,	)	
	)	
Defendant.	)	
_____	)	

**JOINT SUPPLEMENTAL REPORT IN RESPONSE TO THE COURT'S ORDER  
OF MAY 7, 2007**

Pursuant to this Court's Minute Order of May 7, 2007, the parties report as follows:

**Joint Submission**

1. Under this Court's Order of March 16 (Docket #80), dispositive motions are due on or before May 15, 2007, oppositions are due on or before June 15, 2007, and replies, if any, are due on or before July 6, 2007.

2. The parties presently anticipate that on May 15, motions for summary judgment will be filed by Plaintiff, by Defendant Attorney General of the United States, by Defendant-Intervenor Travis County, and by two groups of Private Defendant-Intervenors. The parties also presently anticipate that parties on both the plaintiff and defendant side will be filing opposition briefs on June 15 and replies on July 6.

3. Under Local Civil Rule 7(e), a memorandum in support of or in opposition to a motion shall not exceed 45 pages and a reply memorandum shall not exceed 25 pages, without prior approval of the court.

4. On May 2, the parties filed a joint motion (Docket #90) seeking an order allowing:

a) on May 15 that opening memoranda in support of motions for summary judgment in excess of 45 pages, but not to exceed 90 pages, may be filed by (a) Plaintiff, (b) Defendant Attorney General Gonzales, and (c) one consolidated group of Private Defendant-Intervenors, in addition to briefs not to exceed 45 pages to be filed by (a) Travis County; and (b) another individual Private Defendant-Intervenor or group of Private Defendant-Intervenors, and

b) on June 15 that Plaintiff would be allowed leave to file a memorandum in opposition to the Defendants' motions for summary judgment, in excess of 45 pages and up to the number of pages equal to or less than the total number of pages that are filed by Defendants collectively in Defendants' opening memoranda in support of Defendants' motions for summary judgment.

#### **Defendants' Submission**

5. Defendants have worked diligently throughout this litigation to coordinate their efforts, avoid duplication, and minimize the burden on this Court caused by the presence of eight separately-represented groups of defendants (two of which are governmental entities and therefore have unique constraints). To that end, the six separately represented groups of Private Defendant-Intervenors served consolidated discovery requests as though they were a single party, coordinated the taking of depositions, filed a consolidated Answer to the Amended Complaint, and presently anticipate filing only two briefs on May 15 in support of their motions for summary judgment, only one of which would exceed the usual 45-page limit should this Court grant leave to exceed those page limits. (The Attorney General and Travis County will be filing separate briefs; Travis County anticipates that its brief will be considerably less than 45 pages in length.) The Defendant-Intervenors have also coordinated the preparation of a single

consolidated Statement of Material Facts to provide the Court with their collective position about the material facts that are undisputed in this case, including the salient features of the evidence before Congress that, in their view, supports the 2006 reauthorization of Section 5 of the Voting Rights Act. The Attorney General and Travis County have further coordinated their efforts, to the extent possible, with the Private Defendant-Intervenors in this process, especially with respect to discovery. These collective efforts have facilitated a coordinated and vigorous defense in this complex litigation.

6. At present, it is difficult for Defendants to state with certainty how many separate opposition briefs to Plaintiff's Motion for Summary Judgment they intend to file on June 15, and how many pages they would need for those briefs. The answer to this question may in part depend on whether Plaintiff's brief will make arguments that are unique to particular Defendants (such as the standing of Defendant-Intervenors), to which separate responses may be required. Further, the governmental defendants, by virtue of their status, have different concerns and different perspectives on this case from that of the Private Defendant-Intervenors (as well as from each other), which prevent all of the Defendants from collectively filing a single or even only two briefs. In addition, without having read the Plaintiff's brief, the Defendants cannot be certain about the extent to which they will agree on legal positions to be taken in response to that brief.

7. Nonetheless, Defendants remain keenly aware of the Court's Order of November 28, 2006, directing all parties to take steps to avoid duplication of efforts and reduce redundant filings, and remain committed to endeavoring to the extent possible to avoiding duplication and minimizing filings in this case. To that end, the eight groups of Defendants collectively state that

they do not presently believe that it is likely that more than four opposition briefs to Plaintiff's Motion for Summary Judgment will be necessary on June 15.

8. Due to a longstanding policy of the Department of Justice prohibiting the sharing of its draft briefs, the Attorney General is limited in his ability to substantively coordinate with the Defendant-Intervenors regarding the content of supporting memoranda and oppositions. The Attorney General intends to file his own motion for summary judgment on May 15, and has sought leave to file an oversized brief, not in excess of 90 pages. The Attorney General also intends to file his own opposition to the Plaintiff's motion for summary judgment on June 15. The Attorney General presently expects to file an opposition that is within the normal 45-page length limit. However, the Attorney General may determine, after reading Plaintiff's motion for summary judgment, that more pages are necessary for a full response; in such a case, the Attorney General will seek leave of the Court to file an opposition in excess of 45 pages, but not in excess of 65 pages. Finally, the Attorney General presently anticipates filing a reply on July 6 to Plaintiff's opposition to the Attorney General's motion for summary judgment that is within the Court's normal 25-page length limit.

9. Subject to the possibility that Plaintiff may make arguments directed at particular Defendant-Intervenors that require extended responses, the seven groups of Defendant-Intervenors (including Travis County) do not presently believe that it is likely that they will collectively need to file more than three opposition briefs. Defendant-Intervenors also believe that, at most, they would seek leave for one of those briefs to exceed 45 pages (but probably not in excess of 65 pages).

10. Defendants also propose, if granted leave from this Court to do so, to file a supplemental statement with the Court no later than 10 days after service of Plaintiff's motion

for summary judgment, stating at that time how many briefs they would anticipate filing and what page limitations they would request.

### **Plaintiff's Submission**

11. Plaintiff Northwest Austin Municipal Utility District No. 1 reports that its summary judgment memorandum will likely not exceed 75 pages. The district does not believe that its arguments will invoke any defendant-specific issues and, therefore, believes it would be appropriate for the Court to order the defendants (or at least the private defendant-intervenors) to file a single consolidated response to its motion for summary judgment. Given the defendant-intervenors' statement that they intend to file up to three separate responses to the district's motion for summary judgment, in addition to the response filed by the Attorney General, the Court should at the very least ensure that the district is given sufficient space to respond to those arguments. The district anticipates filing a single, consolidated reply in support of its motion for summary judgment and would ask for up to one-half of the number of pages that defendant and defendant-intervenors collectively use in their combined or individual responses to the district's motion for summary judgment.

12. Defendant and defendant-intervenors have requested a combined total of up to 270 pages to set out their summary judgment arguments (separate and apart from the approximately 300 pages for their statement of material facts that they have previously indicated they intend to file), and the district has chosen not to oppose that request conditioned on it being granted an equal number of pages to respond.

Respectfully submitted.

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 10, 2007, I caused to be served a copy of the foregoing Joint Supplemental Report in Response to the Court's Order of May 7, 2007 to all counsel of record via the Court's CM/ECF filing system.

*/s/ Paul R.Q. Wolfson*  
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