

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.)
)
 ERIC KENNIE, *et al.*,)
)
 Defendant-Intervenors,)
)
 TEXAS STATE CONFERENCE OF NAACP)
 BRANCHES, *et al.*,)
)
 Defendant-Intervenors,)
)
 TEXAS LEAGUE OF YOUNG VOTERS)
 EDUCATION FUND, *et al.*,)
)
 Defendant-Intervenors.)
)
 TEXAS LEGISLATIVE BLACK CAUCUS, *et*)
al.,)
)
 Defendant-Intervenors,)
)
 VICTORIA RODRIGUEZ, *et al.*,)
)
 Defendant-Intervenors.)
)

CASE NO. 1:12-CV-00128
(RMC-DST-RLW)
Three-Judge Court

**ATTORNEY GENERAL'S MOTION TO COMPEL THE
PRODUCTION OF TESTIMONY AND DOCUMENTS**

Pursuant to Federal Rule of Civil Procedure 37, and pursuant to the briefing schedule set out in this Court's Order of May 7, 2012 (Doc. 107), Defendant Eric H. Holder Jr. respectfully

moves for an order compelling the production of testimony and documents that the State of Texas has improperly withheld from discovery. For the reasons set out in the Attorney General's Memorandum of Points and Authorities, the State has misapplied three categories of privilege. First, Texas has withheld deposition testimony and documents based on the state legislative privilege, which is a qualified privilege that should be overcome in whole or in part in this critical litigation. Moreover, the State has asserted a state legislative privilege that far exceeds the permissible scope of that privilege. Second, Texas has asserted an attorney-client privilege over deposition testimony and documents without establishing the existence of each element of the privilege, including the existence of an attorney-client relationship, the conveyance of confidential client information, and the provision of legal advice. Third, the State has similarly asserted the deliberative without establishing all necessary elements, including that documents are deliberative and pre-decisional. The Attorney General therefore respectfully requests that the Court enter the attached Proposed Order Compelling the Production of Testimony and Documents.

Date: May 21, 2012

RONALD C. MACHEN, JR.
United States Attorney
District of Columbia

Respectfully submitted,

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Assistant Attorney General
Civil Rights Division

/s/ Risa Berkower

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CERTIFICATE OF CONFERRAL

I hereby certify that on May 21, 2012, I met and conferred with counsel for the State of Texas in an effort to obtain the requested discovery without court intervention.

/s/ Elizabeth S. Westfall _____

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2012, I served a true and correct copy of the foregoing via the Court's ECF system on the following counsel of record:

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