

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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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.

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

**DEFENDANT ERIC H. HOLDER'S RESPONSE TO PLAINTIFF'S MOTION TO  
MODIFY SCHEDULING ORDER**

Plaintiff, the State of Texas, has moved this Court to modify its scheduling order to permit brief opening statements, to divide trial time among the parties, to permit the State to file a separate appendix from Defendant and Defendant-Intervenors, and to establish a schedule for designating deposition transcripts for inclusion in the trial record. As noted by the State, the trial schedule for this matter is set out in the Court's Initial Scheduling Order (ECF 43) as modified by its Order of May 22, 2012 (ECF 137). The Attorney General responds to the State's requests as follows:

Opening Statements: The Attorney General agrees with the State that the current trial schedule does not specify whether the parties may present opening statements to this Court. The Attorney General disagrees with the State in its belief that a brief opening statement by the State will "substantially assist" the Court in its consideration of the evidence. Given the time constraints of this trial, and the fact that briefing to this Court will have already been completed, the Attorney General believes that opening statements will merely subtract from this Court's and the parties' time without adding significantly to the understanding of the evidence. However, if the Court desires opening statements, the Attorney General would be prepared to present brief opening remarks.

Trial time: The State proposes an allocation of half of the available trial time to the State and half to the Attorney General and Defendant-Intervenors to divide among themselves. The Attorney General agrees with the Defendant-Intervenors that it is premature to allocate trial time when the parties have not yet indicated their proposed witnesses, and the Court has not yet announced its decision regarding witnesses who will present live testimony. Notwithstanding this concern, the Attorney General disagrees with Texas's proposed allocation of trial time, and instead requests a 40-40-20 split to be divided among the State, the Attorney General, and the

Defendant-Intervenors, respectively. The Attorney General believes that this division of time would facilitate the most efficient presentation of evidence to this Court in an orderly fashion.

Joint Appendix: Under the State's proposed modifications, Texas would file a Plaintiff's Appendix, and the Attorney General and all Defendant-Intervenors would file a Defendants' Appendix. Further, legislative transcripts would be designated as joint exhibits. The Attorney General disagrees with the State's modified plan for filing appendices. Alternatively, the Attorney General proposes the designation of the Senate Rules, the legislative transcripts, the signed version of Senate Bill 14, the proposed prior legislative attempts for Texas to enact a voter identification law (HB 1706, HB 218, and SB 362) and the legislative record regarding these bills as joint exhibits comprising a joint appendix and requests that each party, the State, the Attorney General, and the Defendant-Intervenors, file three separate appendices to this joint appendix.

Designation of Deposition Testimony: The State proposes a schedule for submitting deposition designations by June 13, 2012, with counter designations on June 16, 2012, and reply designations on June 19, 2012. Because fact depositions will extend past this initial date, the State's proposed schedule is not practical. Alternatively, the Attorney General requests the following schedule for deposition designations: (1) designations by all parties by June 20; (2) counter-designations by June 25; and (3) replies to counter-designations by June 29.

### **CONCLUSION**

For the reasons set forth above, the Defendant respectfully requests that this Court deny Texas's Motion To Modify The Scheduling Order and respectfully moves the Court to modify the trial schedule as stated herein.

Date: June 5, 2012

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

Respectfully submitted,

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

*/s/ Elizabeth S. Westfall*

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 5, 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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