

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 Gen-
eral of the United States, et al.

Defendants.

Case No. 1:12-cv-00128
(DST, RMC, RLW)

PLAINTIFF'S MOTION FOR ENTRY OF FINAL JUDGMENT

The State of Texas respectfully moves for entry of final judgment on Claim One of the First Amended Expedited Complaint for Declaratory Judgment if the Court elects to defer further proceedings until the Supreme Court decides *Shelby County, Alabama v. Holder*. Texas seeks entry of final judgment under Federal Rule of Civil Procedure 54(b), which provides in relevant part:

When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.

FED R. CIV. P. 54(b). The Court has conducted a trial on the merits of Claim One and entered an order denying the State's request for a declaratory judgment pre-clearing Senate Bill 14. The Court having bifurcated the case for separate consideration of Claim Two, there is no just reason for delay of final judgment as to Claim

One if the Court decides to postpone further proceedings pending a decision in *Shelby County*. Consistent with Local Civil Rule 7, the State is filing a proposed order and a memorandum of points and authorities supporting this motion.

The State of Texas respectfully asks this Court to enter an order granting the State's motion for entry of final judgment as to Claim One in the event that the Court elects to defer further proceedings until after the Supreme Court decides *Shelby County, Alabama v. Holder*.

Dated: November 30, 2012

Respectfully submitted.

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Counsel for the State of Texas

CERTIFICATE OF CONFERENCE

I certify that on November 26, 2012, the State of Texas, represented by Jonathan F. Mitchell, Adam W. Aston, and Matthew H. Frederick, conferred by telephone with Defendant Eric H. Holder, represented by Meredith Bell-Platts, Elizabeth Westfall, Daniel J. Freeman, and Risa Berkower, and Defendant-Intervenors, represented by Ezra Rosenberg, regarding the Court's show cause order of November 16, 2012. Defendant and Defendant-Intervenors declined to agree to immediate appeal of the Court's order on Claim One of the First Amended Expedited Complaint for Declaratory Judgment in the event that the Court deferred proceedings pending a decision in *Shelby County, Alabama v. Holder*.

/s/ Matthew H. Frederick
MATTHEW H. FREDERICK

CERTIFICATE OF SERVICE

I certify that on November 30, 2012, a copy of the foregoing was served through the Court's CM/ECF Document Filing System on all opposing counsel in this case.

/s/ Matthew H. Frederick
MATTHEW H. FREDERICK
Counsel for the State of Texas

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR ENTRY OF FINAL JUDGMENT**

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFF’S MOTION FOR ENTRY OF FINAL JUDGMENT**

Texas filed its First Amended Expedited Complaint for Declaratory Judgment (“Amended Complaint”) on March 15, 2012. *See* ECF No. 25. Claim One of the Amended Complaint sought a declaratory judgment preclearing Senate Bill 14 (SB 14) under Section 5 of the Voting Rights Act. *See id.* at 1. In Claim Two, Texas alleged that Section 5 is unconstitutional. *See id.* at 1–2. In a scheduling order issued on March 27, 2012, the Court bifurcated the case despite the State’s opposition, ordering that “Count II of the State of Texas’s Amended Complaint . . . shall not be addressed unless the Court denies judicial preclearance of Senate Bill [14] (the “Voter-ID law”).” Initial Scheduling Order (ECF No. 43) 1 (explaining that discovery provisions and deadlines applied only to Count I). The court conducted a trial on Claim One, which concluded on July 13, 2012. *See* ECF No. 324.2 (Minute Entry). On August 30, 2012, this Court issued an order declining to preclear SB 14. *See Texas v. Holder*, No. 12-cv-128, 2012 WL 3743676 (D.D.C. Aug. 30, 2012).

On September 14, 2012, the Court entered a scheduling order for proceedings on Claim Two of the Amended Complaint, setting out a briefing schedule for cross-motions for summary judgment to be completed by November 12, 2012. *See* Scheduling Order (ECF No. 345). On November 16, 2012, the Court ordered the parties to “show cause why the Court should not defer action until after the Supreme Court decides *Shelby County, Alabama v. Holder, Attorney General, et al.*, Case No. 12-96.” Order (ECF No. 357). As explained in its response to the Court’s show-cause order, Texas opposes any further delay in adjudicating Claim Two. However, if this Court

chooses to defer action on Claim Two until after the Supreme Court decides *Shelby County*, Texas requests that the Court also enter final judgment on Claim One of the Amended Complaint to allow for immediate appeal.

LEGAL STANDARD

Federal Rule of Civil Procedure 54(b) provides in relevant part:

When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.

FED R. CIV. P. 54(b). Rule 54(b) “permits immediate appeal upon certification by a district judge of orders that are conclusive with respect to specific parties or claims.” *Banks v. Office of Senate Sergeant-At-Arms & Doorkeeper of U.S. Senate*, 471 F.3d 1341 (D.C. Cir. 2006).

Before entering final judgment on an individual claim under Rule 54(b), a court must first determine that the claim in question has been finally adjudicated. *See Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7 (1980). To qualify, the decision at issue “must be a ‘judgment’ in the sense that it is a decision upon a cognizable claim for relief, and it must be ‘final’ in the sense that it is ‘an ultimate disposition of an individual claim entered in the course of a multiple claims action.’” *Id.* (quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436 (1956)). If the judgment is final, “the district court must go on to determine whether there is any just reason for delay.” *Id.* at 8. The district court acts as a “dispatcher,” exercising its judicial discretion “to determine the ‘appropriate time’ when each final decision

in a multiple claims action is ready for appeal.” *Id.* (quoting *Mackey*, 351 U.S. at 436, 437).

In determining whether there is any just reason for delay, the district court “weighs both ‘justice to the litigants’ and ‘the interest of sound judicial administration.’” *Brooks v. District Hosp. Partners, L.P.*, 606 F.3d 800, 806 (D.C. Cir. 2010) (quoting *Curtiss-Wright Corp.*, 446 U.S. at 6, 8); *see also Bldg. Indus. Ass’n of Superior California v. Babbitt*, 161 F.3d 740 (D.C. Cir. 1998). The question of justice to the litigants involves “the impact of delayed review on the parties.” *Baystate Med. Ctr. v. Leavitt*, 587 F. Supp. 2d 44, 46 (D.D.C. 2008). Considerations of sound judicial administration include whether the claim on which final judgment is sought is “separable from the others remaining to be adjudicated and whether the nature of the claims already determined [is] such that no appellate court [will] have to decide the same issues more than once even if there [are] subsequent appeals.” *Brooks*, 606 F.3d at 806 (quoting *Curtiss-Wright Corp.*, 446 U.S. at 8).

ARGUMENT AND AUTHORITIES

A. The Court’s Order on Claim One is Final.

The Court’s order denying preclearance of SB 14 plainly qualifies as final because it is “an ultimate disposition of an individual claim.” *See Curtiss-Wright Corp.*, 446 U.S. at 7. The Court’s ruling on Texas’s request for a declaratory judgment that SB 14 meets the substantive requirements of Section 5 leaves nothing to be decided. The only remaining step with respect to Claim One is to seek appellate review.

B. There Is No Just Reason to Delay Entry of Final Judgment if the Court Defers Further Proceedings Until the Supreme Court Decides *Shelby County v. Holder*.

If the Court elects to defer consideration of Claim Two until after a decision in *Shelby County*, there is no just reason to delay entry of final judgment as to Claim One, which would permit an immediate appeal of the Court's denial of pre-clearance. That the State's claim for judicial preclearance is separable from its facial challenge to Section 5 is evident from the procedural history of this case. Less than a month after Texas amended its complaint to challenge the constitutionality of Section 5, the Court bifurcated the State's claims for the express purpose of avoiding litigation of Claim Two unless and until Texas did not prevail on Claim One. Although the State would have preferred to litigate the claims together, deferral of the constitutional challenge did not prevent the Court from conducting a trial and ruling on the merits of preclearance. Having bifurcated the claims from the outset over the State's objection, there is no reason to require that they be rejoined only to lie dormant until the Supreme Court rules in *Shelby County*.

Permitting a separate appeal of Claim One, if necessary, will not offend the judicial interest in avoiding piecemeal appeals, *see, e.g., Baystate Med. Ctr.*, 587 F. Supp. 2d at 46, because an immediate appeal of the preclearance ruling does not create the risk that the Supreme Court will have to consider "the same issues more than once" if the constitutional claim is ultimately decided. *See id.* (quoting *Curtiss-Wright Co.*, 446 U.S. at 8–9). Claim One presents the largely fact-intensive question whether SB 14 meets the substantive requirements of Section 5; Claim Two

tests Congress's authority to enact Section 5 under its Fifteenth Amendment enforcement power.

Finally, if the Court elects to defer consideration of Claim Two, delaying the appeal of this Court's preclearance decision until after a ruling in *Shelby County* will unquestionably impose practical burdens on Texas elections as well as the heavy federalism costs noted by the Supreme Court in *Northwest Austin* and recognized by this Court. *See, e.g.*, Order (ECF No. 154) at 6–7 (recognizing the need to minimize “federal intrusion into sensitive areas of state and local policymaking” in the application of legislative privilege, quoting *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 202 (2009)). Texas has a substantial interest not only in safeguarding the integrity of its elections but in implementing its duly enacted laws. Texas therefore suffers irreparable harm with every passing election cycle, and this harm will manifest well before the next round of national and statewide elections in 2014. *See, e.g.*, TEX. ELEC. CODE § 41.001 (establishing uniform dates for elections in May and November of odd-numbered years as well as November of even-numbered years). If the Court decides to postpone further proceedings until *Shelby County* is decided, the resulting delay of Texas's preclearance appeal will necessarily fall outside of “the ‘normal delay’ inherent in litigation of multiple claims.” *Baystate Med. Ctr.*, 587 F. Supp. 2d at 46 (quoting *Bldg. Indus. Ass'n*, 161 F.3d at 743–44). In light of the minimal impact that an immediate appeal would have on judicial administration and the heavy burden that postponement of appeal will have on the State of Texas, entry of final judgment under Rule 54(b) is appro-

priate if the Court elects to defer consideration of Claim Two until after the Supreme Court decides *Shelby County v. Holder*.

CONCLUSION

For the reasons stated above, the State of Texas respectfully requests that if the Court defers further proceedings until the Supreme Court decides *Shelby County v. Holder*, the Court also enter final judgment as to Claim One.

Dated: November 30, 2012

Respectfully submitted.

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ORDER

On November 16, 2012, this Court ordered the parties to show cause why further action should not be deferred until after the Supreme Court decides *Shelby County, Alabama v. Holder*, No. 12-96. In its response to that order, and in a separately filed motion, the State of Texas requested that the Court enter final judgment as to Claim One of its First Amended Expedited Complaint for Declaratory Judgment if the Court elected to defer action until the decision in *Shelby County*. Having ordered that all action be deferred until after the Supreme Court decides *Shelby County*, and having considered Texas's motion for entry of final judgment, the memorandum in support thereof, and all responses in opposition thereto, the Court is of the opinion that its order on Claim One, which denied preclearance of Senate Bill 14, is final for purposes of Federal Rule of Civil Procedure 54(b) and that there is no just reason for delay of final judgment. Texas's motion for entry of final judgment should be **GRANTED**.

It is therefore **ORDERED** that Texas's motion for entry of final judgment on Claim One is **GRANTED**.

Date:

DAVID S. TATEL
United States Circuit Judge

ROSEMARY M. COLLYER
United States District Judge

ROBERT L. WILKINS
United States District Judge