

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STATE OF TEXAS,

Plaintiff

vs.

ERIC H. HOLDER, JR.,
in His Official Capacity as Attorney
General of the United States,

Defendant.

Case No. 1:12-CV-00128

(RMC, DST, RLW)
Three-Judge Court

REPLY IN SUPPORT OF MOTION TO COMPEL

Plaintiff the State of Texas files this Reply in support of its Motion to Compel to address Defendant-Intervenors' Response and Cross-Motion for Protective Order. Texas incorporates by reference its Motion to Compel and briefly addresses the specific points raised by Defendant-Intervenors. Even accepting Defendant-Intervenors' contention that they have standing to challenge discovery served on the United States, their response does not justify denial of the State's Motion to Compel, nor are they entitled to a protective order against production of Social Security Administration data.

Defendant-Intervenors contend that the citizenship status of registered voters in Texas is not relevant to the State's claim for preclearance of Senate Bill 14. *See, e.g.*, Defendant-Intervenors' Response at 3. Specifically, they argue that citizenship information maintained by the Social Security

Administration is not relevant because it has no connection to the photographic identification requirement of SB 14. *Id.* at 3–4.

Citizenship information is relevant to the preclearance claim in part because it supports the State’s contention that SB 14 was not enacted with a discriminatory purpose. The fact that the State’s voter registration rolls include persons who are not eligible to vote creates the opportunity for fraud. Identifying ineligible persons who are registered to vote is consistent with the stated purpose of SB 14: to maintain the integrity of the State’s electoral system. The fact that non-citizens are registered to vote in Texas is relevant to the purpose of SB 14 because it calls the integrity of the electoral system into question. Moreover, citizenship is related to SB 14’s photographic identification requirement because a Texas driver’s license—perhaps the most common form of identification authorized by SB 14—is not available to undocumented residents. That other forms of authorized identification may be available to non-citizens does not change the fact that photo ID requirements are likely to prevent at least some ballots from being cast in the name of persons who are not eligible to vote.

There is no basis for Defendant-Intervenors’ claim that the State’s effort to discover citizenship information is pretextual. *See* Response at 5. Although eligibility to vote does turn on a number of factors—residence, age, mental capacity, and felony conviction among them—information relevant to many of those factors is either not maintained the Social Security

Administration or is available from other sources. The fact that Texas's request for SSA data goes to a single criterion of eligibility does not call into question the sincerity of its effort to identify ineligible voters. Alternative sources and additional criteria of eligibility are not relevant to the motion to compel production of relevant information from SSA. Similarly, Defendant-Intervenors' arguments about the reliability of SSA data do not go to the relevance of the requested information and therefore do not justify denial of the State's discovery request. Potential flaws in the SSA data go its weight, not its relevance or admissibility.

The Court's protective order is sufficient to safeguard the privacy of any information produced to the State by the Social Security Administration. Moreover, Texas has expressed its willingness to limit the potential privacy concerns by limiting its discovery request to the Social Security Administration, for example by providing a list with a small percentage of Texas registered voters and asking SSA to identify only those individuals (or the number of individuals) who are not citizens. In any event, the Court's protective order is sufficient to prevent the exposure of Texas residents' personal information.

CONCLUSION

For the reasons stated above and in the Motion and memorandum in support, the State's Motion to Compel should be granted, and the Defendant-Intervenors' motion for protective order should be denied.

Dated: May 29, 2012

Respectfully submitted.

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