

**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,*

and

TEXAS LEAGUE OF YOUNG VOTERS  
EDUCATION FUND, IMANI CLARK,  
KIESSENCE CULBREATH, DEMARIANO  
HILL, FELICIA JOHNSON, DOMINIQUE  
MONDAY, AND BRIANNA WILLIAMS

*Proposed Defendant-Intervenors.*

Civ. No. 1:12-cv-00128-RMC-DST-RLW

**PROPOSED DEEENDANT-INTERVENORS' ANSWER TO PLAINTIFF'S  
FIRST AMENDED EXPEDITED COMPLAINT  
FOR DECLARATORY JUDGMENT**

Proposed Defendant-Intervenors the Texas League of Young Voters Education Fund, Imani Clark, KiEssence Culbreath, Demariano Hill, Felicia Johnson, Dominique Monday, and Brianna Williams (collectively, "Proposed Defendant-Intervenors") submit the following Answer in response to the First Amended Expedited Complaint for Declaratory Judgment (Dkt. No. 16-1) ("amended Complaint") filed in this matter by the State of Texas ("Texas") on March 12, 2012.

**RESPONSES TO COMPLAINT**

1. Proposed Defendant-Intervenors deny each and every averment of the Complaint except as specifically admitted in the following responses to the enumerated paragraphs of the Complaint.

2. Proposed Defendant-Intervenors deny that Section 5 of the Voting Rights Act (“VRA”), as most recently amended and reauthorized, exceeds the enumerated powers of Congress and conflicts with Article IV of the Constitution and the Tenth Amendment.

### **I. PARTIES**

3. Proposed Defendant-Intervenors admit the allegation in paragraph 3.

4. Proposed Defendant-Intervenors admit the allegation in paragraph 4.

### **II. JURISDICTION AND VENUE**

5. Proposed Defendant-Intervenors admit the allegation in paragraph 5.

### **III. THREE-JUDGE COURT**

6. Proposed Defendant-Intervenors admit the allegation in paragraph 6 to the extent that the Voting Rights Act authorizes Texas to bring a claim seeking VRA Section 5 preclearance before this Court, and Texas may request the appointment of a three-judge court.

### **IV. FACTS AND BACKGROUND**

7. Proposed Defendant-Intervenors deny the allegations in paragraph 7, except to the extent that they state that the Governor of Texas signed S.B. 14 into law on May 27, 2011, and that the law “requires most voters to present a government-issued photo identification when appearing to vote at the polls.”

8. Proposed Defendant-Intervenors deny the allegations in paragraph 8, except to the extent that they suggest that voters who lack a government-issued photo identification (“photo ID”) may seek to obtain an election identification certificate (“EIC”) from the Texas Department of Public Safety (“Texas DPS”).

9. Proposed Defendant-Intervenors admit the allegations in paragraph 9.

10. Proposed Defendant-Intervenors deny the allegations in paragraph 10, except to the extent that they state that Indiana has a photo ID requirement for in-person voting, and is not covered by Section 5 of the Voting Rights Act, and that Wisconsin and Kansas enacted photo identification laws in 2011.

11. Proposed Defendant-Intervenors deny the allegations in paragraph 11, except to the extent that Georgia does have a photo ID requirement for in-person voting, which was precleared by the Department of Justice in 2005.

12. Proposed Defendant-Intervenors admit the allegations in paragraph 12.

13. Proposed Defendant-Intervenors admit the allegations in paragraph 13.

14. Proposed Defendant-Intervenors deny the allegations in paragraph 14, except to the extent that, during the administrative preclearance process, the DOJ sent a letter to the Texas Director of Elections dated September 23, 2011, and that this paragraph selectively quotes from that letter.

15. Proposed Defendant-Intervenors deny the allegations in paragraph 15, except to the extent that, during the administrative preclearance process, Texas responded to a DOJ letter on October 4, 2011.

16. Proposed Defendant-Intervenors deny the allegations in paragraph 16, except to the extent that, during the administrative preclearance process, the DOJ sent a letter to Texas dated November 16, 2011, and that this paragraph selectively quotes from that letter.

17. Proposed Defendant-Intervenors deny the allegations in paragraph 17, except to the extent that, during the administrative preclearance process, Texas responded to a DOJ letter on January 12, 2012.

18. Proposed Defendant-Intervenors deny the allegations in paragraph 18, except to the extent that the DOJ denied administrative preclearance to South Carolina's proposed photo ID law on December 23, 2011 and that in its letter of denial, the DOJ cited data showing that 8.4% of white registered voters in South Carolina lacked photo ID, as compared with 10% of non-white registered voters in South Carolina.

19. Proposed Defendant-Intervenors deny the allegations in paragraph 19, except to the extent that they accurately quote communications from the DOJ, and that, in denying administrative preclearance to South Carolina's proposed voter ID law, the DOJ concluded that South Carolina had failed to meet its burden under Section 5 of the VRA.

20. Proposed Defendant-Intervenors deny the allegations in paragraph 20 [*sic* 18],<sup>1</sup> except to the extent that the DOJ denied administrative preclearance to Texas' S.B. 14 on March 12, 2012, and that, in denying administrative preclearance, concluded that Texas failed to meet its burden under Section 5 of the VRA.

21. Proposed Defendant-Intervenors deny the allegations in paragraph 21 [*sic* 18], except to the extent that they selectively quote communications between the DOJ and Texas.

22. Proposed Defendant-Intervenors deny the allegations in paragraph 22 [*sic* 19].

23. Proposed Defendant-Intervenors deny the allegations in paragraph 23 [*sic* 20], except to the extent that they selectively quote communications between the DOJ and Texas.

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<sup>1</sup> Plaintiff's first amended Complaint is misnumbered after paragraph 19. Proposed Defendant-Intervenors have numbered their Answer according to the correct paragraph numbers for the amended Complaint, but have marked, in brackets, the paragraph numbers as they appear in the amended Complaint.

24. Proposed Defendant-Intervenors deny the allegations in paragraph 24 [*sic* 19], except to the extent that they selectively quote the opinion of Justice Stevens and the concurrence of Justice Scalia in *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008).

25. Proposed Defendant-Intervenors deny the allegations in paragraph 25 [*sic* 20].

26. Proposed Defendant-Intervenors deny the allegations in paragraph 26 [*sic* 21], except to the extent that they observe that the DOJ does not discuss Georgia's voter ID law in their March 12 letter to Texas.

## V. CLAIM FOR RELIEF

### CLAIM ONE:

Proposed Defendant-Intervenors deny the preamble to this section.

27. Proposed Defendant-Intervenors incorporate herein their responses to Plaintiff's averments in paragraphs 7-26 [*sic* 7-21], and deny any remaining allegations contained therein.

A. Proposed Defendant-Intervenors deny the preamble to this section.

28. Proposed Defendant-Intervenors deny the allegations in paragraph 28 [*sic* 25], except to the extent that they state that Texas has requested a declaration from this Court, in this action, that S.B. 14 does not "deny or abridge" the right to vote within the meaning of Section 5, and was not enacted with that purpose.

29. Proposed Defendant-Intervenors deny the allegations in paragraph 29 [*sic* 26].

30. Proposed Defendant-Intervenors deny the allegations in paragraph 30 [*sic* 27].

31. Proposed Defendant-Intervenors deny the allegations in paragraph 31 [*sic* 28], except to the extent that they selectively quote the opinion of Justice Stevens and the concurrence of Justice Scalia in *Crawford*.

32. Proposed Defendant-Intervenors deny the allegations in paragraph 32 [*sic* 29], except to the extent that they selectively quote the opinion of Justice Stevens in *Crawford*.

B. Proposed Defendant-Intervenors deny the preamble to this section.

33. Proposed Defendant-Intervenors deny the allegations in paragraph 33 [*sic* 30], except to the extent that they state that Texas requests a declaratory judgment from this Court with respect to S.B. 14.

34. Defendant-Intervenors deny the allegations in paragraph 34 [*sic* 31], except to the extent that they state that minorities are “statistically less likely than others to currently possess a government-issued photo identification,” and to the extent that they selectively quote words and phrases from Section 5 of the VRA.

35. Defendant-Intervenors deny the allegations in paragraph 35 [*sic* 32], except to the extent that they accurately quote communications between the DOJ and Texas during the administrative preclearance process of S.B. 14.

36. Defendant-Intervenors deny the allegations in paragraph 36 [*sic* 33], except to the extent that they state that Section 5 grants authority to the “DOJ or this Court to withhold preclearance from voting qualifications” under certain circumstances, but not to the extent that they misinterpret and/or mischaracterize the standards set forth under Section 5.

37. Defendant-Intervenors deny the allegations in paragraph 37 [*sic* 34], except to the extent that they selectively quote the Supreme Court's decisions in *Beer v. United States*, 425 U.S. 130 (1976) and *Reno v. Bossier Parish School Bd.*, 528 U.S. 320 (2000), but not to the extent that they misinterpret and/or mischaracterize the Supreme Court's decisions in *Beer* and *Bossier*.

38. Defendant-Intervenors deny the allegations in paragraph 38 [*sic* 35], except to the extent that they selectively quote the opinion of Justice Stewart in *City of Mobile v. Bolden*, 446 U.S. 55 (1980).

39. Proposed Defendant-Intervenors deny the allegations in paragraph 39 [*sic* 36].

C. Proposed Defendant-Intervenors deny the preamble to this section.

40. Proposed Defendant-Intervenors deny the allegations in paragraph 40 [*sic* 37].

41. Proposed Defendant-Intervenors deny the allegations in paragraph 41 [*sic* 38], except to the extent that they selectively quote Section 2 of the Fifteenth Amendment and the decision of the U.S. Supreme Court in *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

42. Proposed Defendant-Intervenors deny the allegations in paragraph 42 [*sic* 39].

43. Proposed Defendant-Intervenors deny the allegations in paragraph 43 [*sic* 40], except to the extent that they selectively quote the Supreme Court's decision in *Katzenbach v. Morgan*, 384 U.S. 641 (1966), and Justice Black's opinion, which

announces the judgment, but expresses his own view, in *Oregon v. Mitchell*, 400 U.S. 112 (1970).

44. Proposed Defendant-Intervenors deny the allegations in paragraph 44 [*sic* 41], except to the extent that they selectively quote *City of Boerne* and *Allen v. State Bd. of Elections*, 393 U.S. 544 (1969)

45. Proposed Defendant-Intervenors deny the allegations in paragraph 45 [*sic* 42].

D. Proposed Defendant-Intervenors deny the preamble to this section.

46. Proposed Defendant-Intervenors deny the allegations in paragraph 46 [*sic* 43].

47. Proposed Defendant-Intervenors deny the allegations in paragraph 47 [*sic* 44], except to the extent that they selectively quote from Justice Black's opinion, which announces the judgment, but expresses his own view, in *Oregon*.

E. Proposed Defendant-Intervenors deny the preamble to this section.

48. Proposed Defendant-Intervenors deny the allegations in paragraph 48 [*sic* 45].

49. Proposed Defendant-Intervenors deny the allegations in paragraph 49 [*sic* 46], except to the extent that they state that “[f]ederal courts may enjoin state officials from implementing unconstitutional statutes, and Congress may pass legislation to preempt state law consistent with its enumerated constitutional powers.”

50. Proposed Defendant-Intervenors deny the allegations in paragraph 50 [*sic* 47].

F. Proposed Defendant-Intervenors deny the preamble to this section.



51. Proposed Defendant-Intervenors deny the allegations in paragraph 51 [*sic* 48].

52. Proposed Defendant-Intervenors deny the allegations in paragraph 52 [*sic* 49], except to the extent that they selectively quote from the transcript of oral argument before the Supreme Court in *Perry v. Perez*, No. 11-713 (Jan. 9, 2012).

53. Proposed Defendant-Intervenors deny the allegations in paragraph 53 [*sic* 50], except to the extent that they selectively quote the opinion of Justice Stevens in *Crawford*.

**CLAIM TWO:**

54. Proposed Defendant-Intervenors incorporate herein its responses to Plaintiff's averments in paragraphs 7-53 [*sic* 7-50].

55. Proposed Defendant-Intervenors deny the allegation in paragraph 55 [*sic* 52].

**VI. DEMAND FOR JUDGMENT**

56. Proposed Defendant-Intervenors respectfully request that this Court deny Plaintiff's request for relief, including, but not limited to, a "declaratory judgment that Senate Bill 14 may take effect immediately" and that Section 5 of the VRA "exceeds the enumerated powers of Congress and conflicts with Article IV of the Constitution as well as the Tenth Amendment."

**VII. PRAYER FOR RELIEF**

Wherefore, Proposed Defendant-Intervenors respectfully request that the Court enter a judgment:

- A. Dismissing Plaintiff's Complaint with prejudice;

B. Denying Plaintiff's request for a declaratory judgment determining that the voting changes that are the subject of the Complaint neither have a discriminatory or retrogressive effect nor were adopted with a discriminatory purpose;

C. Denying Plaintiff's request for a declaratory judgment determining that Section 5 is unconstitutional;

D. Granting Proposed Defendant-Intervenors such other relief as the Court deems appropriate.

Respectfully submitted,

/s/ John Payton

John Payton

*Director-Counsel*

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 19, 2012, I electronically filed the foregoing with the Clerk of court by using the CM/ECF system which will send a notice of electronic filing to counsel of record who are registered participants of the Courts CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to counsel of record who are not CM/ECF participants as indicated in the notice of electronic filing.

Respectfully submitted,

/s/ John Payton

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