IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS *Plaintiff*, vs. ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES *Defendant*.	Case No. 1:12-cv-00128 RMC-DST-RLW

PLAINTIFF'S MOTION FOR PROTECTIVE ORDER REGARDING LEGISLATIVE PRIVILEGE

On March 19, 2012, the United States sent a letter to the State of Texas requesting the depositions of twelve sitting Legislators who supported Senate Bill 14. A copy of this letter is attached as "Exhibit A." On March 20, 2012, the United States submitted Requests for Production and Interrogatories that sought additional privileged materials. The Requests for Production are attached as "Exhibit B," and the Interrogatories are attached as "Exhibit C." All of these requests seek to discover communications between members of the state legislature, communications between state legislators and their staff, and communications between state legislators and their constituents.

The State of Texas maintains that legislative privilege forecloses the defendants' efforts to discover communications between members of the state

legislature, communications between state legislators and their staff, and communications between state legislators and their constituents. Texas further submits that this privilege precludes the defendants' attempt to compel legislators who supported SB 14 to appear for deposition. These discovery requests represent an unwarranted federal intrusion into the operations of the Texas Legislature, and threaten to push section 5's already-questionable incursions on state prerogatives past the constitutional breaking point.

STATEMENT OF POINTS AND AUTHORITIES

A. State Legislators Enjoy a Common-Law Privilege Against Testimony and Discovery Regarding the Legislative Process.

The Supreme Court has long recognized a legislative privilege that protects anyone acting in a legislative capacity, including staff, from incurring civil liability for or testifying about legislative acts. *See, e.g., Gravel v. United States*, 408 U.S. 606, 615-16 (1972). For U.S. Senators, members of the U.S. House of Representatives, and their staffs, this privilege is constitutionally entrenched in Article I's Speech and Debate Clause. *See* U.S. CONST. art. I, § 6, cl. 1. State legislators lie beyond the reach of this constitutionally protected privilege, but they nevertheless hold a similar (though less expansive) privilege under federal common law. *See Supreme Court of Virginia v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 731-32 (1980). The same rationale undergirds each of these legislative privileges: "[R]egardless of the level of government, the exercise of legislative discretion should not be inhibited by judicial interference or distorted by the fear of personal liability." *See Bogan v. Scott-Harris*, 523 U.S. 44, 52 (1998); *see also id.* at 55

(noting that it is "'not consonant with our scheme of government for a court to inquire into the motives of legislators'") (quoting *Tenney v. Brandhove*, 341 U.S. 367, 377 (1951)).

The state legislative privilege is not always co-extensive with the constitutional privilege protected by the Speech and Debate Clause. In *United States v. Gillock*, 445 U.S. 360 (1980), for example, the Supreme Court rejected a state legislator's efforts to invoke legislative privilege in a federal criminal prosecution, even as the Court acknowledged that the Constitution's Speech and Debate Clause would have extended an evidentiary privilege to that legislator had he been serving in Congress. *Id.* at 366-75. But the core of the constitutional privilege established in the Speech and Debate Clause informs the scope of the common-law privilege available to state legislators. *See Tenney v. Brandhove*, 341 U.S. 367, 372-76 (1951). And inter-legislator communications fall within the core of the evidentiary privilege protected by the Speech and Debate Clause. *See Jewish War Veterans v. Gates*, 506 F. Supp. 2d 30, 52 (D.D.C. 2007) (holding that the Speech and Debate Clause "affords a testimonial (or 'non-disclosure') privilege pursuant to which Members cannot be required either to produce documents or to answer questions, whether in a deposition or on the witness stand."). Numerous courts have recognized that the common-law legislative privilege likewise protects state legislators from testifying about legislative acts.[1]

[1] *See, e.g., Schlitz v. Commonwealth of Virginia*, 854 F.2d 43, 46 (4th Cir. 1988) ("Where, as here, the suit would require legislators to testify regarding conduct in their legislative capacity, the doctrine of legislative immunity has full force."); *Miles-Un-Ltd., Inc. v. Town of New Shoreham*, 917 F. Supp. 91, 98 (D.N.H. 1996) ("Effectuating the intentions of the legislative immunity doctrine, legislators acting

B. A State Legislator's Privilege Against Compelled Testimony and Discovery Applies With Full Force in Cases That Allege Impermissible Purpose.

The Supreme Court's ruling in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), compels this Court to recognize some form of evidentiary privilege for state legislative communications under Fed. R. Evid. 501. Rule 501 provides:

> The common law—as interpreted by United States courts in the light of reason and experience—governs a claim of privilege unless any of the following provides otherwise:
> - The United States Constitution;
> - a federal statute; or
> - rules prescribed by the Supreme Court

FED. R. EVID. 501. Both "reason" and "experience" demonstrate that an evidentiary privilege for legislative communications is needed to ensure an effective and independent state legislature, consistent with the republican form of government that the United States must guarantee to the people of every State. If litigants can depose individual legislators and traipse through every communication of those legislators simply by alleging that a state law was enacted with an impermissible

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within the realm of legitimate legislative activity, should not be required to be a party to a civil action concerning legislative activities, nor should they be required to testify regarding those actions"); *2BD Assocs. Ltd. P'ship v. County Comm'rs of Queen Anne's County*, 896 F. Supp. 528, 531 (D. Md. 1995) ("[T]he effect of the [common-law legislative privilege] doctrine is twofold; it protects [state] legislators from civil liability, and it also functions as an evidentiary and testimonial privilege. . . . [I]f immunity from civil liability attaches to a given action, then such testimonial immunity applies as well."); *Suhre v. Board of Comm'rs*, 894 F. Supp. 927, 932 (W.D.N.C. 1995) ("Because the commissioners are entitled to legislative immunity, they are protected from testifying concerning their motives for refusing to remove the [Ten Commandments display]. . . . Where the defense of the case would require the commissioners to testify about their legislative conduct and their motives, legislative immunity precludes the suit."), *rev'd on other grounds*, 131 F.3d 1083 (4th Cir. 1997); *Marylanders for Fair Representation, Inc. v. Schaefer*, 144 F.R.D. 292, 297 (D. Md. 1992) ("Legislative immunity not only protects state legislators from civil liability, it also functions as an evidentiary and testimonial privilege. . . . The immunity enjoyed by legislative staff derives from the individual legislators themselves: to the extent a legislator is immunized, his staffers are likewise 'cloaked.'").

purpose, then state lawmakers will be chilled from engaging in the communications necessary to perform their jobs properly. *Cf. United States v. Nixon*, 418 U.S. 683, 705 (1974); *Gravel v. United States*, 408 U.S. 606, 616-17 (1972) (noting that "it is literally impossible . . . for Members of Congress to perform their legislative tasks without the help of aides and assistants; that the day-to-day work of such aides is so critical to the Members' performance that they must be treated as the latter's alter egos.").

That is why *Village of Arlington Heights* frowns on the notion that legislators should be forced to testify in discriminatory-purpose litigation, and insists that the determination of whether a discriminatory purpose exists must be made by examining publicly available sources—such as legislative history, floor debates, and the historical background of the decision. In rejecting a plaintiff's claim that the Village's zoning decision had been motivated by racial bias, the Court wrote:

> The legislative or administrative history may be highly relevant, especially where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports. *In some extraordinary instances* the members might be called to the stand at trial to testify concerning the purpose of the official action, *although even then such testimony frequently will be barred by privilege. See Tenney v. Brandhove*, 341 U.S. 367 (1951); *United States v. Nixon*, 418 U.S. 683 (1974); 8 J. Wigmore, Evidence s 2371 (McNaughton rev.ed. 1961).

429 U.S. at 268 (emphasis added). In a footnote, the Court further explained its disapproval of allowing litigants to compel testimony from state or local lawmakers:

> This Court has recognized, ever since *Fletcher v. Peck*, 6 Cranch 87, 130-131 (1810), that judicial inquiries into legislative or executive motivation represent a substantial intrusion into the workings of other branches of government. Placing a decisionmaker on the stand is

> therefore "usually to be avoided." *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 420 (1971).

429 U.S. at 268 n.18.

Arlington Heights establishes two propositions. First, litigants who seek to establish a discriminatory legislative purpose cannot compel testimony from state legislators except in "extraordinary instances." Second, even when an "extraordinary instance" might justify compelling testimony from a state lawmaker, the testimony sought from that legislator will "frequently" be barred by privilege. Although *Arlington Heights* does not define the scope of this "privilege," the Court's citation of *Nixon* indicates that the privilege must extend to at least some of the confidential communications involving state legislators. *Cf. Nixon v. Sirica*, 487 F.2d 700, 717 (D.C. Cir. 1973) (noting that "[executive] privilege, intended to protect the effectiveness of the executive decision-making process, is analogous to that between a congressman and his aides under the Speech and Debate Clause"). Neither a court nor a litigant can deny the existence of an evidentiary privilege for state legislative communications and remain faithful to the Supreme Court's pronouncement in *Arlington Heights*. *See, e.g., Cano v. Davis*, 193 F. Supp. 2d. 1177, 1179 (C.D. Cal. 2002) (enforcing legislative privilege in a redistricting lawsuit by prohibiting a legislator who waived his privilege from "testify[ing] to the legislative acts of legislators who have invoked the privilege or to those of staffers or consultants who are protected by the privilege").

Legislative privilege will not apply in all federal-court proceedings. In *United States v. Gillock*, 445 U.S. 360 (1980), the Supreme Court held that a state

legislator cannot invoke legislative privilege when he is being prosecuted in federal court for violating a federal criminal statute. But *Gillock* was careful to limit its holding to the context of federal criminal prosecutions,[2] and rejected the claim of legislative privilege only after conducting a balancing test and concluding that the federal government's interest in enforcing its criminal statutes was sufficiently strong to categorically preclude any assertion of state legislative privilege. *See id.* at 373. The protections of legislative privilege remain applicable in civil litigation alleging discriminatory purpose, as *Arlington Heights* and numerous other court decisions make clear. *See e.g. Comm. for Fair and Balanced Map v. Illinois State Bd. of Elections,* 2011 WL 4837508 at *7 (N.D.Ill. Oct. 12, 2011); *Rodriguez v. Pataki,* 280 F. Supp. 2d 89, 94-104 (S.D.N.Y. 2003); *Cano,* 193 F. Supp. 2d at 1179-80.

C. The Court Must Construe the Legislative Privilege Broadly in Section 5 Proceedings to Avoid Constitutionally Dubious Intrusions into State Sovereignty.

In the unique setting of Section 5 preclearance litigation, courts must apply the State legislative privilege broadly to minimize intrusion on State sovereignty and preserve the integrity of the legislative process. Rule 501 leaves courts with considerable latitude in deciding how broadly to construe evidentiary privileges and how to balance them against countervailing interests. And as far as we are aware, *Arlington Heights* and *Gillock* represent the only binding pronouncements from the Supreme Court or the D.C. Circuit that discuss the evidentiary and testimonial

[2] *See id.* at 373 (noting that the Court's precedents on state legislative immunity "have drawn the line at civil actions"). *See also In re Grand Jury*, 821 F.2d 946, 957-58 (3d Cir. 1987) (finding no legislative privilege in the context of a criminal investigation).

aspects of state legislative privilege (rather than a legislator's immunity from criminal prosecution or civil liability). The common-law immunity conferred on State legislators must be construed broadly in this case not only to minimize judicial intrusion into the State legislative process but also to avoid an unconstitutional application of Section 5.

Section 5 stands at odds with the basic constitutional principle of coequal sovereignty, not only by prohibiting duly enacted state laws from taking immediate effect, but also by carving out a subset of States for disfavored treatment based on a badly outdated coverage formula. *See Nw. Austin Mun. Util. Dist. No. 1 v. Holder*, 129 S. Ct. 2504, 2511 (2009) (noting that section 5's preclearance requirement "imposes substantial federalism costs," which "have caused Members of this Court to express serious misgivings about the constitutionality of § 5."). The very existence of a preclearance obligation was constitutionally questionable even in the 1960s; it is far more dubious today, when the racial gap in voter registration and turnout is *lower* in section 5 jurisdictions than in non-covered jurisdictions. *See Nw. Austin*, 129 S. Ct. at 2511. And the Supreme Court expressed grave doubts about section 5's constitutionality in *Northwest Austin*, going so far as to adopt a highly strained interpretation of the statutory language in an effort to "save" it from unconstitutionality. *See, e.g.*, *The Supreme Court 2008 Term Leading Cases*, 123 HARV. L. REV. 362, 362 (2009) ("[T]he Court abandoned the widely accepted convention that statutory definitions control the meaning of statutory words."); Ernest A. Young, *The Continuity of Statutory and Constitutional Interpretation*, 98

CAL. L. REV. 1371, 1387 (2010) ("Chief Justice Roberts's interpretation of the Voting Rights Act in Northwest Austin . . . may not have represented the 'best' reading of the statutory text . . . .").

The constitutionality of section 5 turns, in large measure, on reducing the burdens that covered jurisdictions must shoulder to implement their duly enacted laws. For this reason, *Northwest Austin* requires this Court to apply the State's legislative privilege as broadly as possible, given that section 5's preclearance requirement already pushes constitutional boundaries by "intrud[ing] into sensitive areas of state and local policymaking." *Id.* at 2511 (quoting *Lopez v. Monterey County*, 525 U.S. 266, 282 (1999)). If *Northwest Austin* requires courts to twist seemingly unambiguous statutory language in an effort to mitigate section 5's affronts to state autonomy and dignity, then it surely requires courts to deploy their common-law powers toward similar ends by preserving the States' longstanding evidentiary privileges. Courts must conduct judicial-preclearance proceedings in a manner that will mitigate rather than aggravate the "substantial" federalism costs that section 5's constitutionally dubious preclearance procedure already imposes on the States. Interpreting section 5 to allow (or require) state legislators to be haled into federal court and required to divulge privileged communications before their duly enacted laws can take effect makes the States into vassals of the Department of Justice.

Enforcing the state legislative privilege will not interfere with the judicial preclearance process because it does not prevent litigants from establishing that a

state law was enacted with a racially discriminatory purpose. There was no need for the courts to compel testimony from state legislators in order to conclude that the grandfather clause was enacted with the purpose of keeping blacks from voting. *See Guinn v. United States*, 238 U.S. 347 (1915). A racially discriminatory purpose can be determined from publicly available documents, the relevant history surrounding the enactment, and common sense. *See, e.g., Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886). There is no basis to compel members of the Texas Legislature to give testimony without their consent, and permit the Department of Justice (and private parties without any statutory enforcement authority or accountability) to rummage through their correspondence and communications with their colleagues, staff members, and constituents. And to demand that Texas produce these witnesses and documents to prove the *absence* of a discriminatory purpose only aggravates the constitutional questions associated with the section 5 regime—questions that post-*Northwest Austin* courts are duty-bound to avoid.

CONCLUSION

The Court should grant the plaintiffs' motion for protective order.

Respectfully submitted.

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Dated: March 22, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this day, March 22, 2012, I electronically filed this motion with the Clerk of the Court using the CM/ECF system which will electronically serve the following counsel of record:

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March 19, 2012

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(via email, hard copy to follow)

Re: *Texas v. Holder*, Civil Action No 1:12-cv-00128 (D.D.C)

Dear Mr. Mitchell:

We write to provide you with a preliminary list of members of the Texas legislature whom the United States will seek to depose and categories of documents which we will seek from those witnesses. Please note that we reserve the right to supplement or remove from this list of legislator witnesses up to and including the close of discovery. We also reserve the right to issue deposition notices pursuant to Federal Rule of Civil Procedure 30(b)(6) to identify for deposition other individuals with relevant knowledge.

We will seek to depose Representative Jose Aliseda, Representative Leo Berman, Senator Brian Birdwell, Representative Dennis Bonnen, Senator Troy Fraser, Representative Patricia Harless, Senator Dan Patrick, Representative Debbie Riddle, Representative Joe Straus, and Senator Tommy Williams; we may seek to depose Representative Linda Harper-Brown and former Representative Betty Brown. In conjunction with these depositions, we will seek the following categories of documents from the witnesses:[1]

(1) All documents concerning any or all reasons, justifications, rationales, interests, or purposes in enacting S.B.14.

(2) All documents concerning the sources, history, drafting, introduction, passage, and implementation of S.B. 14.

(3) All documents concerning the procedure by which S.B. 14 was introduced, considered, and passed by the legislature.

(4) All documents relating to the implementation of S.B. 14.

[1] The term "documents" is defined to include, but is not limited to, all memorandum, correspondence, emails, communications, notes, studies, reports, working papers, documentation of conversations, meeting minutes, meeting agendas, and interoffice and intra office communications that are in the possession of the witness or of his or her employees, agents, or persons acting on their behalf.

(5) All documents relating to any analysis, assessment, or review of who possesses the requisite forms of photographic identification pursuant to S.B. 14.

(6) All documents related to any analysis, assessment, or review of the effect that S.B. 14 will impose upon minority voters, on voters on account of race or color, or on voters who are members of a language minority group.

(7) All documents relating to all activities that a person who is a registered voter, but does not have the requisite identification, must complete in order to obtain the documentation necessary to cast a valid ballot pursuant to S.B. 14.

(8) All documents related to any and all alternatives to S.B. 14 or amendments to S.B. 14 that were presented to, or considered, assessed, or reviewed by any legislator during the drafting or consideration of S.B. 14.

(9) All documents concerning other efforts to pass legislation relating to, or otherwise implement photo identification requirements for voting, including efforts from past legislative sessions.

(10) All documents concerning civil or criminal allegations, investigations, warnings, enforcement actions, complaints, lawsuits, prosecutions, settlements, plea agreements, citations, fines, or other actions by or on behalf of Texas against any person relating to (a) voter fraud and/or (b) in person voter impersonation between January 1, 2002 and the present.

As you know, we plan to begin depositions the week of April 9, 2012. In order to comply with the Court's order of March 15, 2012 directing the parties to engage in expedited discovery, please contact these witnesses to determine their availability for that week and initiate collection of the above-referenced documents so that you can produce them expeditiously, if you agree or are ordered to do so. Please feel free to contact me at (202) 305-0185 if you have any questions.

Sincerely,

Jennifer L. Maranzano
Attorney, Voting Section

cc: All counsel of record (via email)

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

UNITED STATES' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Defendant Eric J. Holder, Jr. requests that Plaintiff State of Texas ("Plaintiff" or "State") identify and produce the documents and items requested below for inspection and copying and deliver copies to counsel for United States by March 27, 2011. This request is continuing in nature as provided by Rule 26(e) of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

1. "The State," "Texas," or "Plaintiff" means Plaintiff State of Texas and any of its agents, representatives, employees, and any person acting or purporting to act on its behalf.

2. "S.B. 14" means 2011 Texas General Laws Chapter 123, which amends the Texas Transportation Code relating to the issuance of election identification certificates, and which amends the Texas Election Code relating to procedures for implementing the photographic identification requirements for the State of Texas.

3. "Legislator" means an elected member of the Texas House of Representatives or the Texas State Senate, including employees, staff, interns, representatives, designees, agents, or any persons acting or purporting to act on behalf of the Texas House of Representatives or the Texas State Senate, any committee thereof, or any elected member of the Texas House of Representatives or the Texas State Senate.

4. "Document" is defined to be synonymous in meaning and scope as the term "document" is used under Federal Rule of Civil Procedure 34 and the phrase "writings and recordings" is defined in Federal Rule of Evidence 1001, and includes, but is not limited to, any computer discs, tapes, printouts and emails, and databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

5. In responding to these requests, please produce all responsive documents in the possession, custody, or control of the State, or documents known to be available to the State, regardless of whether such documents are possessed directly by the State or its past and present agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on behalf of the State or subject to the State's control.

6. All references in these requests to an individual person or officer include any and all past and present agents, advisors, employees, representatives, attorneys, consultants,

contractors, predecessors in office or position, and all other persons or entities acting on behalf of or under control of such a person.

7. All references in these requests to any governmental entity, or any other type of organization include its past and present officers, executives, directors, employees, agents, representatives, attorneys, consultants, contractors and all other persons acting or purporting to act on behalf of such an organization.

8. All documents shall be produced as they are kept in the usual course of business or be organized and labeled to correspond to each request. For all documents produced, please identify the names of the person from whose files the documents were produced.

9. No portion of a document request may be left unanswered because an objection is interposed to another part of that request. If the State objects to any portion of a document request, the State must state with specificity the grounds of any objections. Any ground not stated will be waived.

10. If production of any document referred to in this request is refused based on the assertion of a claim or privilege, with respect to each such document; (1) identify the document by date, name and title of author, name(s) of recipient(s), title or references, and a description of the document without revealing information for which the privilege is claimed; (b) state the privilege(s) pursuant to which production is refused; and (c) in the case of any document concerning any meeting or conversation, state the date and subject matter of such meeting or conversation, and identify the persons who attended the meeting or participated in the conversation.

11. In the event that a responsive document has been destroyed or has passed out of the State's custody or control, please identify the following information with respect to each such

document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

12. In the event that a responsive document is not available in the form requested but is available in another form or can be obtained, in whole or in part, from other data in the State's possession, custody, or control, please so state and either supply the information requested in the form in which it is available or supply the data from which the information requested can be obtained.

13. Original and all non-identical copies of responsive documents, including all drafts must be produced. If the State is unable to produce the original of any document, please produce the best available copy and all non-identical copies, including drafts.

14. In construing these requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms "and" and "or" either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the masculine gender include the feminine, and words used in the singular include the plural.

15. If any part of the requested information is stored on computer disc, tapes or in any other electronic form, and is responsive to the request, it should be provided in the electronic form, consistent with the parties' agreement on production of electronically stored information.

16. Documents available only in paper or hardcopy format shall be scanned into electronic format and produced via a secure FTP site, as provided herein.

17. Paper documents shall be scanned as 300 dpi single-page TIFF files, using CCITT Group IV compression. Documents that contain color (*i.e.*, non-black-and-white) text, photographs, or graphic images shall be scanned in color. Each page shall be branded with a

unique Bates number, which shall not be an overlay of the image. The Bates numbering convention shall be in the format "TX _ ########" where "########" represents the eight-digit sequential number of the document being produced by the State. The images shall be accompanied by: (1) an Opticon or IPRO cross-reference file that associates each Bates number with its corresponding single-page TIFF image file; and 2) a "text load file" containing one line for each document and fields for first and last Bates number, Attachment Beginning Bates Number, Attachment End Bates Number, TO, FROM, CC:, BCC:, subject, date sent, time sent, Message ID, Main Date, Title, Document Type, Custodian , Redacted flag, Original Filename, original File Path, Folder, Create Date/Time, Modify Date/Time, native filepath. The text load file shall contain a pipe (|) as a field separator and carots (^) around each field. The text generated by Optical Character Recognition (OCR) shall be saved in a text file named for the first Bates number of the document and saved in the same directory as the images. (*e.g.*, TX_00000001.tif and TX_00000001.txt.

18. Word, WordPerfect, PDF, and PowerPoint documents shall be converted to images and produced consistent with the specifications in paragraph two, except that the text file accompanying the images shall contain the filename of the document as a metadata field, along with the extracted text from each document in place of OCR text, unless the document contains redactions, in which case re-OCR'ed text may be provided.

19. These document requests apply to the period from January 1, 2007, through the present unless otherwise limited or expanded by a particular request.

DOCUMENT REQUESTS

1. All documents identified or relied upon in responding to United States' First Set of Interrogatories (March 20, 2012).

2. All documents related to the sources, drafting, development, or analysis of S.B. 14 and the procedural sequence of introduction, consideration, and enactment of S.B. 14.

3. All documents presented to, produced by, transmitted to, or relied upon by the State of Texas, including but not limited to the Governor, the Lieutenant Governor, the Secretary of State, the Attorney General, Legislators, and Texas county election officials, related to the drafting, proposing, development, or plans to implement S.B. 14.

4. All documents related to any and all alternatives to S.B. 14 or amendments to S.B. 14 that were presented to, or considered, assessed, or reviewed by any Legislator during the drafting or consideration of S.B. 14.

5. The State's voter registration database, driver license database, personal identification card database, and concealed handgun license database in a format agreed upon by the parties, along with all available underlying data necessary for purposes of comparing the data in these databases against each other and the supplemental information necessary to render the information reasonably useable to undertake an analysis of those data.

6. Databases used by the State to produce two matches of registered-voter data against data sources maintained by the State's Department of Public Safety to the Attorney General on September 7, 2011; October 4, 2011; and January 12, 2012.

7. All documents related to the factual allegation in paragraph 33 of the First Amended Complaint (Doc. 25) that "Texas's Voter-ID law was not enacted with the purpose of disenfranchising minority voters," including but not limited to each and every reason, justification, rationale, interest, or purpose related to the enactment of S.B. 14 and the nexus between any or all of those purposes and S.B. 14.

8. All documents related to the factual allegation in paragraph 36 of the First Amended Complaint (Doc. 25) that S.B. 14 imposes a minor inconvenience on voters.

9. All documents related to the factual allegation in Claim One of the First Amended Complaint (Doc. 25) that S.B. 14 does not have the "effect of denying or abridging the right to vote on account or race or color, or because of membership in a language minority group. "

10. All documents related to communications between, among, or with Legislators, their staff, lobbyists, groups, organizations and members of the public concerning the introduction, enactment, or implementation of S.B. 14.

11. All documents related to any calculations, reports, audits, estimates, projections, or other analyses of the effect that S.B. 14 will impose upon minority voters, on voters on account of race or color, or on voters who are members of a language minority group.

12. All documents related to plans to implement and administer the issuance of "election identification certificates" established by S.B. 14.

13. All documents that list or otherwise identify any and all forms of photo identification issued by the State.

14. All documents related to any and all allegations concerning (a) in-person voter impersonation or other in-person voter fraud that occurred in the State of Texas from January1, 2002, to the present and (b) instances of voting in Texas by persons who are not citizens of the United States from January1, 2002, to the present.

15. All documents related to any calculations, reports, audits, estimates, projections, or other analyses of all activities that a person who is a registered voter, but does not have the requisite identification, must complete in order to obtain the documentation necessary to cast a valid ballot pursuant to S.B. 14.

16. All documents related to any reports, estimates, projections, or other analyses of the impact that S.B. 14, or other proposals to require voter applicants or voters to produce photo identification, will or may have on voter turnout or voter registration.

17. All documents related to any reports, estimates, projections, or other analyses of the impact that S.B. 14 will or may have on rates of use of and acceptance of provisional ballots.

18. All documents related to implementation of S.B. 14 and training, voter education, and outreach concerning S.B. 14, including but not limited to training of county election officials, state agencies, and election-related organizations or associations; voter education; and mobile outreach or any other effort to provide voters who do not possess requisite photo identification under S.B. 14 with an election identification certificate or other form of identification accepted under S.B. 14.

19. All documents related to the consideration of S.B. 362 (81st Legislature) and H.B. 218 (80th Legislature).

Date: March 20, 2011

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CERTIFICATE OF SERVICE OF DISCOVERY

I hereby certify that on March 20, 2012, I served a true and correct copy of the foregoing via electronic mail on the following counsel of record:

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

UNITED STATES' FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Eric J. Holder, Jr. requests that Plaintiff State of Texas answer the following interrogatories, separately and fully, in writing and under oath, and serve a copy of the answers and any objections on counsel for United States by March 27, 2012. These interrogatories shall be deemed continuing in nature as provided in Federal Rule of Civil Procedure 26(e).

DEFINITIONS AND INSTRUCTIONS

1. "The State," "Texas," or "Plaintiff" means Plaintiff State of Texas and any of its agents, representatives, employees, and any person acting or purporting to act on its behalf.

2. "S.B. 14" means 2011 Texas General Laws Chapter 123, which amends the Texas Transportation Code relating to the issuance of election identification certificates, and which

amends the Texas Election Code relating to procedures for implementing the photographic identification requirements for the State of Texas.

3. "Legislator" means an elected member of the Texas House of Representatives or the Texas State Senate, including employees, staff, interns, representatives, designees, agents, or any persons acting or purporting to act on behalf of the Texas House of Representatives or the Texas State Senate, any committee thereof, or any elected member of the Texas House of Representatives or the Texas State Senate.

4. "Person," unless otherwise specified, shall mean and include natural persons, corporations, firms, partnerships, proprietorships, associations, trusts, estates, government bodies, government agencies and commissions, and any other organization or entity. Whenever reference is made to a person, it includes any and all of such persons' predecessors in office or position, past or present principals, employees, agents, attorneys, consultants, contractors, and other representatives.

5. "Document" is defined to be synonymous in meaning and scope as the term "document" is used under Federal Rule of Civil Procedure 34 and the phrase "writings and recordings" is defined in Federal Rule of Evidence 1001, and includes, but is not limited to, any computer discs, tapes, printouts and emails, and databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

6. "Communication" means any transmission of information by oral, graphic, written pictorial, electronic, or other perceptible means, including by document, or later

memorialized in a document, including email, memoranda of conversations, correspondence, data processing, pictures, or recordings.

7. "Database" means any data sets, reports, programs, and files accessible by computer that contain data that can be processed and/or sorted using standard spreadsheet or database software, including but not limited to Oracle SQL, Microsoft Access, Microsoft Excel, Lotus 1-2-3, Quattro Pro, SAS, STATA, and SPSS.

8. To "identify" in reference to a person means to state a person's full name, present or last known business address and business telephone number, present or last known employer and job title, and (if no business address or telephone number is available), present or last known home address and home telephone number.

9. To "identify" in reference to documents means to include the nature of the document (*e.g.*, memorandum, correspondence, report, etc.); the title, date, authors, signatories, senders, and recipients of such document; a general description of such document sufficient to permit it to be identified with particularity in a request for production of documents or a subpoena; the present or last known location of such document; and the identity of the person or persons having custody, control, or possession thereof.

10. To the extent the identification of any document is objected to or otherwise withheld, please set forth the basis for objection. Whenever an objection is asserted based on privilege, identify the basis or bases for the claimed privilege and identify the information or document as to which the privilege is asserted. For any document as to which a privilege is asserted, please state the type of document (*e.g.*, letter, memorandum, correspondence, etc.); the title, date, authors, signatories, senders, and recipients of the document; the general subject matter of the document; the recipients of any copies of the document; the names appearing on

any circulation lists associated with the document; and the factual basis for the claim of privilege in sufficient detail to permit the Court to ascertain the validity of any such claim. *See* Fed. R. Civ. P. 26(b)(5).

11. To "identify" in reference to oral statements and communications means to state the date of the statement or communication; the identity of each person making or participating in the statement or communication and each person who was present; and a description of what was said or the substance of the statement or communication.

12. In answering each interrogatory:

a) identify each person who prepared or assisted in the preparation of the interrogatory;

(b) state whether the answer is within the personal knowledge of the person answering the interrogatory and, if not, the identity of each person known to have personal knowledge of the answer;

(c) identify each person who provided information or input, or who was interviewed or consulted in order to complete the interrogatory;

(d) identify each document not prepared in anticipation of this litigation that was used in any way to formulate the answer to the interrogatory; and

(e) identify each person who possessed documents not prepared in anticipation of this litigation which were used in any way to formulate the answer to the interrogatory.

13. These interrogatories apply to the period from January 1, 2007, through the present unless otherwise limited or expanded by a particular request.

INTERROGATORIES

1. Identify each person who was involved in any manner in the drafting, proposing, development, or analysis of S.B. 14, including but not limited to Legislators, the Texas Legislative Council, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Attorney General, the Office of the Secretary of State, and any other persons not employed by or serving as an agent of the State, and describe each person's involvement.

2. Identify all documents and communications presented to, relied upon, produced by, transmitted to, or relied upon by the State of Texas, including but not limited to the Governor, the Lieutenant Governor, the Secretary of State, the Attorney General, Legislators, and Texas county election officials, related to the drafting, proposing, development, or plans to implement S.B. 14.

3. Identify all persons with knowledge of and all documents and communications concerning the procedural sequence of the drafting, introduction, consideration, and enactment of S.B. 14.

4. Identify all documents and persons containing or possessing knowledge or information that the State of Texas contends support its factual allegation in paragraph 33 of the First Amended Complaint (Doc. 25) that "Texas's Voter-ID law was not enacted with the purpose of disenfranchising minority voters," including but not limited to each and every reason, justification, rationale, interest, or purpose related to the enactment of S.B. 14 and the nexus between any or all of those purposes and S.B. 14.

5. Identify all documents and persons containing or possessing knowledge or information that the State of Texas contends support its factual allegation in paragraph 36 of the First Amended Complaint (Doc. 25) that S.B. 14 imposes a minor inconvenience on voters.

6. Identify all documents and persons containing or possessing knowledge or information that the State of Texas contends support its factual allegation in Claim One of the First Amended Complaint (Doc. 25) that S.B. 14 does not have the "effect of denying or abridging the right to vote on account or race or color, or because of membership in a language minority group."

7. Identify and describe all databases and other documents that contain lists of Texas residents who (a) are registered to vote in the State of Texas; (b) possess a valid Texas driver license or Texas personal identification card issued by the Texas Department of Public Safety; (c) possess a valid Texas concealed handgun license; (d) are members of the United States armed forces who reside in Texas; (e) possess a United States citizenship certificate; or (f) possess a United States passport. Please include a description of each category of information that is maintained for each individual in each of these databases.

8. Describe in detail the process of obtaining an election identification certificate, including but not limited to (a) each and every location in the State at which one may obtain a election identification certificate and its hours of operation; (b) the secondary identification that a voter must supply to obtain a election identification certificate; (c) for each and every piece of secondary identification, the process for obtaining such identification and the cost associated with obtaining such identification.

9. Identify each and every form of photo identification currently issued by the State and for each such form of photo identification, identify the agency, office, or entity that issues it.

10. Identify all documents and persons containing or possessing knowledge or information related to the matches of registered-voter data with data sources maintained by the

State's Department of Public Safety sent to the Attorney General on September 7, 2011; October 4, 2011; and January 12, 2012.

11. Identify all documents concerning, and every person with knowledge or information about any and all (a) in-person voter impersonation or other in-person voter fraud that occurred in the State of Texas from January1, 2002, to the present and (b) instances of voting in Texas by persons who are not citizens of the United States from January1, 2002, to the present.

12. Identify the specific nature of and the schedule for all training, voter education, and outreach relating to S.B. 14, including but not limited to training of county election officials, state agencies, and election-related organizations or associations; voter education; and mobile outreach or any other effort to provide individuals with an election identification certificate. Identify all documents supporting your response to this Interrogatory.

By:

Date: March 20, 2011

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CERTIFICATE OF SERVICE OF DISCOVERY

I hereby certify that on March 20, 2012, I served a true and correct copy of the foregoing via electronic mail on the following counsel of record:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS *Plaintiff*, vs. ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES *Defendant.*	Case No. 1:12-cv-00128 RMC-DST-RLW

ORDER

For the reasons set forth in the State of Texas's motion, the Court hereby GRANTS plaintiff's motion for protective order. The defendants are ORDERED to cease seeking discovery of communications between members of the state legislature, communications between state legislators and their staff, and communications between state legislators and their constituents. Defendants are FURTHER ORDERED to not compel members of the Texas Legislature to appear for deposition.

It is so ORDERED this _____ day of _____ , 2012.

_____

United States District Judge