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, TEXAS LEAGUE OF YOUNG VOTERS EDUCATION FUND, *et al.*, Defendant-Intervenors. TEXAS LEGISLATIVE BLACK CAUCUS, *et al.*, Proposed Defendant-Intervenors, VICTORIA RODRIGUEZ, *et al.*, Proposed Defendant-Intervenors.	CASE NO. 1:12-CV-00128 (RMC-DST-RLW) Three-Judge Court

DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PROTECTIVE ORDER

The United States seeks discovery concerning Texas's claim that the State's photographic voter identification law, Senate Bill 14 (2011) ("SB 14"), "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color," or language minority status. 42 U.S.C. § 1973c. To that end, the United States has notified the State of its intention to notice depositions of state legislators and has propounded interrogatories and requests to produce documents concerning legislators and their staff. The State of Texas has identified legislators and legislative staff as the sole known individuals "likely to have information that bears significantly" on the purpose of SB 14, Pl. Initial Disclosures at 2-4 (Ex.1),[1] but nevertheless seeks to deny the United States this discovery by moving for a protective order to bar discovery of "communications between members of the state legislature, communications between state legislators and their staff, and communications between state legislators and their constituents" based on state legislative privilege. Tx. Mem. at 1 (Doc. 34); *see also* Proposed Order (Doc. 34-4) (same). "There is no state legislative privilege identified in the Federal Rules of Evidence and the D.C. Circuit has never recognized one." *Texas v. United States* (*Texas II*), No. 11-cv-1303, 2012 WL 11241, at *4 (D.D.C. Jan. 5, 2012) (three-judge court). Not only does Texas concede that this Circuit has never recognized a state legislative privilege, the State does not even attempt to comply with the rigorous standards required for recognition of a new privilege. Even if this Court were to recognize a qualified state legislative privilege, which it should not, the privilege must yield to important federal interests in enforcement of the Fourteenth and Fifteenth Amendments. *See United States v. Gillock*, 445 U.S. 360, 373 (1980); *South Carolina v. Katzenbach*, 383 U.S. 301, 323-37 (1966). For the

[1] The State named an additional individual who "participated in the administrative preclearance process of SB 14" and potentially possesses "knowledge regarding the data that was provided to the Department of Justice during the administrative preclearance process on registered voters in Texas." *Id.* at 4.

reasons that follow, the United States respectfully requests that this Court deny the State's motion.

I. Section 5 of the Voting Rights Act Requires an Inquiry into Legislative Purpose.

The Federal Rules of Civil Procedure define the scope of discovery as "any nonprivileged matter that is relevant to any party's claim or defense . . . ." Fed. R. Civ. P. 26(b)(1). This language "has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978) (citing *Hickman v. Taylor*, 329 U.S. 495, 501 (1947)). Although protective orders concerning "a particular interrogatory or production of a particular document or category of documents" are not exceptional, most requests to bar discovery from particular witnesses "are denied." 8A Charles Alan Wright, Arthur R. Miller, et al., *Federal Practice and Procedure* § 2037.

Section 5 of the Voting Rights Act prohibits covered jurisdictions from implementing voting changes that either have a retrogressive effect or were motivated by a discriminatory purpose. *See* 42 U.S.C. § 1973c(a); *Beer v. United States*, 425 U.S. 130 (1976). In a judicial preclearance action, this Court must accordingly make findings under both the effect prong and purpose prong of Section 5. *See generally Shelby County. v. Holder*, 811 F. Supp. 2d 424, 436-39 (D.D.C. 2011) (discussing the preclearance standards under both prongs, as modified by the 2006 Amendments to the Voting Rights Act). Discovery seeking to determine whether the state can meet its burden that the change was not motivated by discriminatory purpose is an appropriate inquiry. Therefore, the discovery at issue here is relevant.[2] Texas bears the burden

[2] The United States intends to depose those legislators believed to have had the most active role in drafting, introducing, and advocating for SB 14 and will request that legislators produce documents concerning the history of SB 14, justifications for the Act, plans for implementation, the Act's effect on members of racial minority groups, and other facts supporting the State's allegations. *See* Letter from

of establishing that SB 14 has neither a discriminatory effect nor a discriminatory purpose. *See* 42 U.S.C. § 1973c(b); *see also Georgia v. United States*, 411 U.S. 526, 538 (1976). Should Texas, in its case-in-chief, present a *prima facie* case as to the absence of a discriminatory motivation, the Attorney General then has the opportunity to introduce evidence that would preclude the State from meeting its statutory burden. *See Bossier Parish Sch. Bd. v. Reno*, 907 F. Supp. 434, 446 (D.D.C. 1995) (three-judge court), *vacated on other grounds*, 520 U.S. 471 (1997). Accordingly, the Attorney General is entitled to take reasonable discovery – including the depositions of decision-makers – in order to have the opportunity to identify, develop, and proffer such evidence. *See, e.g.*, *Arizona v. Reno*, 887 F. Supp. 318, 323 (D.D.C. 1995) (three-judge court).

The discovery at issue here relates directly to the purpose prong. Under this inquiry, Texas bears the burden of showing that SB 14 is free of a discriminatory purpose, even if it can establish the absence of a discriminatory effect. As the Supreme Court noted in this regard:

> it may be asked how it could be forbidden by §5 to have the purpose and intent of achieving only what is a perfectly legal result under that section and why we need remand for further proceedings with respect to purpose alone. The answer is plain, and we need not labor it. An official action, whether an annexation or otherwise, taken for the purpose of discriminating against [minority individuals] on account of their race has no legitimacy at all under our Constitution or under the statute. Section 5 forbids voting changes taken with the purpose of denying the vote on the grounds of race or color.

City of Richmond v. United States, 422 U.S. 358, 378 (1975). Evidence of a prohibited purpose may be direct or circumstantial, and a discriminatory purpose need only be a motivating factor –

Jennifer L. Maranzano, Attorney, U.S. Dep't of Justice, to Jonathan Franklin Mitchell, Solicitor General, State of Texas (Mar. 19, 2012) (Doc. 34-1). The United States has already requested that the State respond to interrogatories and produce documents concerning similar subjects. *See* United States' First Set of Requests for Production of Documents (Mar. 20, 2012) (Doc. 34-2); United States' First Set of Interrogatories (Mar. 20, 2012) (Doc. 34-3). This targeted discovery is far from a fishing expedition.

not a primary motivation of the legislation – in order for preclearance to be denied. *See Reno v. Bossier Parish Sch. Bd.* (*Bossier Parish I*), 520 U.S. 471, 488 (1997); 28 C.F.R. § 51.54(a). The Supreme Court has held that "in cases brought under § 5 of the Voting Rights Act of 1965, the *Arlington Heights* framework should guide a court's inquiry into whether a jurisdiction had a discriminatory purpose in enacting a voting change." *Hunt v. Cromartie*, 526 U.S. 541, 546 n.2 (1999) (citing *Bossier Parish 1*, 520 U.S. at 488)); *see also Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977) (framework). Congress endorsed this approach to Section 5's purpose inquiry during the reauthorization of the Voting Rights Act in 2006. *See* H.R. Rep. No. 109-478, at 42 (2006).

"[A]ssessing a jurisdiction's motivation in enacting voting changes is a complex task requiring a 'sensitive inquiry into such circumstantial and direct evidence as may be available.'" *Bossier Parish I*, 520 U.S. at 488 (quoting *Arlington Heights*, 429 U.S. at 266). Under the *Arlington Heights* rubric, the "important starting point" for assessing whether the State can establish that the proposed plan was adopted free of a discriminatory purpose is "the impact of the official action whether it 'bears more heavily on one race than another.'" *Id*. at 489 (quoting *Arlington Heights*, 429 U.S. at 266). Beyond evidence of the effect of the change on the ability of minority voters to participate in the political process, a court must assess the historical background of the decision, particularly if it reveals a series of decisions undertaken with discriminatory intent; the sequence of events leading up to the decision; whether the challenged decision departs, either procedurally or substantively, from the normal practice; and contemporaneous statements and viewpoints held by the decision-makers. *See id.* (quoting *Arlington Heights*, 429 U.S. at 266-268).

In judicial preclearance cases, courts addressing legislative purpose rarely begin and end with an examination of the official legislative record. *See, e.g.*, *Texas v. United States* (*Texas I*), No. 11-cv-1303, 2011 WL 6440006, at *21 (D.D.C. Dec. 22, 2011) (three-judge court) ("[The purpose prong's] intensely fact-driven inquiry is typically difficult to resolve at the summary judgment stage."); *Texas v. United States* (*Edwards Aquifer*), 866 F. Supp. 20, 27 (D.D.C. 1994) (three-judge court) (denying summary judgment on the basis "that several Texas legislators believed that the [change at issue] had a discriminatory purpose at the time of its passage"). Instead, extensive formal or informal discovery – including taking testimony from elected decision-makers – is generally required. *See, e.g.*, *New York v. United States*, 874 F. Supp. 394,402 (D.D.C. 1994) (three-judge court); *Georgia v. Ashcroft*, 195 F. Supp. 2d 25, 32 (D.D.C. 2002) (three-judge court), *vacated on other grounds*, 539 U.S. 461 (2003); *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982) (three-judge court), *aff'd* 459 U.S. 1166 (1983). Intent discovery is particularly well-founded where – as in this case – there is substantial evidence that the law at issue has a disparate impact on minority voters. *See Bossier Parish I*, 520 U.S. at 488-89; *see also* Letter from Thomas E. Perez, Ass't Att'y Gen., U.S. Dep't of Justice, to Keith Ingram, Director of Elections, State of Texas (Mar. 12, 2002) (Doc. 25-7). Overall the history of contested preclearance actions demonstrates that these matters are "extraordinary circumstances" in which legislators may be called to the stand. *Arlington Heights*, 429 U.S. at 268. Texas's calling of eight legislators and three members of legislative staff as witnesses in a Section 5 trial earlier this year aptly demonstrated this point. *See* Joint Notice of Trial Witnesses, *Texas v. United States*, No. 11-cv-1303 (D.D.C. Dec. 28, 2011) (Doc. 123) (Ex. 2).[3]

[3] The State places great weight on dicta in *Arlington Heights* concerning the propriety of legislative testimony. *See* Tex. Mem. at 5-6 (quoting *Arlington Heights*, 429 U.S. at 268 & n.18). The standard for which the State advocates, however, cannot be squared with *Arlington Heights*: an absolute bar on legislative testimony would not permit calling legislators to the stand even in extraordinary cases.

Previous panels of this Court have noted the necessity and utility of legislative testimony. In *Arizona v. Reno*, the court denied the State of Arizona's motion to limit discovery and the State's motion for summary judgment on the purpose prong of Section 5 because the United States had not yet been afforded "reasonable discovery in order to determine if evidence of a discriminatory purpose exists." 887 F. Supp. at 323. Noting that under *Arlington Heights*, "the specific sequence of events leading up to the [enactment of the voting change] and the legislative and administrative history of those decisions are relevant to determining whether [the voting change] was motivated by a discriminatory purpose," the Court found that summary judgment was unwarranted where the United States had "not yet been able to identify and depose many of the officials – state court judges, legislators, and executive officials – who participated in the decision" to make the voting change at issue. *Id.* The court noted that while Arizona had submitted affidavits from some legislators in support of its motion for summary judgment, the United States was "entitled" to depose "the other officials who participated in the process" regarding the purpose issue under Section 5. *Id.*

Once developed, testimony of legislators and staff typically provides crucial evidence bearing on the central findings that courts must make in Section 5 declaratory judgment cases. For example in *Georgia v. Ashcroft*, the testimony of elected officials was "significant" to the Supreme Court's consideration of the impact of the voting change at issue. *See* 539 U.S. 461, 471-75, 483 (2003). In *Busbee v. Smith*, depositions of state legislators were crucial to obtaining contemporaneous statements concerning racial intent, and this Court relied on testimony from legislators about "overt racial statements" in finding a discriminatory purpose and denying

---

Moreover, these dicta have no bearing on the United States' interrogatories and requests for the production of documents.

preclearance. 549 F. Supp. at 500, 517.[4] And in *Port Arthur v. United States*, this Court considered the testimony of elected officials in deciding whether the officially stated reasons for the changes at issue were pretextual. 517 F. Supp. 987, 1021-23 (D.D.C. 1981) (three-judge court).

The testimony of particular legislators and legislative staff members (or the equivalent local decision-makers) is likely to bear directly on the *Arlington Heights* factors. This is because the Section 5 inquiry puts the decision-making process itself at issue and because the bulk of the relevant information is within the decision-makers' exclusive control. *See Arizona v. Reno*, 887 F. Supp. at 323 (describing the necessity for deposition testimony of decision-makers in a Section 5 declaratory judgment action); *see also Jones v. City of College Park*, 237 F.R.D. 517, 521 (N.D. Ga. 2006) (concluding that deposition testimony of officeholders is appropriate where "government intent is at the heart of the issue in this case"); *United States v. Irvin*, 127 F.R.D. 169, 173 (C.D. Cal. 1989) (noting that the decision-process itself was called into question by allegations of intentional discrimination under Section 2 of the Voting Rights Act); *cf. United States v. Bd. of Educ.*, 610 F. Supp. 695, 700 (N.D. Ill. 1985) ("Here, the decisionmaking process is not 'swept up into' the case, it *is* the case.").[5]

---

[4] In *Busbee v. Smith*, the testimony of several state legislators, elected executive officials, and individuals assisting legislators in the redistricting process, was obtained after the court denied the State of Georgia's motion for a protective order. *See* Docket, *Busbee v. Smith*, No. 82-665, at 4, 6 (Doc. 52 and 82) (Ex. 3); Order, *Busbee v. Smith*, No. 82-665 (D.D.C. Apr. 22, 1982) (Doc. 82) (Ex. 4) (denying Georgia's motion for a protective order and permitting depositions of legislators).

[5] Courts considering intentional discrimination claims under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, have also relied on the testimony of elected decision-makers when considering allegations of discriminatory purpose. *See, e.g.*, *Brooks v. Miller*, 158 F.3d 1230, 1236 (11th Cir. 1998); *Garza v. County of Los Angeles*, 756 F. Supp. 1298, 1314-18 (C.D. Cal. 1990), *aff'd* 918 F.2d 763, 768 (9th Cir. 1990).

II. No Privilege Shields Evidence in the Sole Possession of State Legislators from Scrutiny under the Voting Rights Act.

In addition to the unambiguous relevance of the evidence that the State seeks to withhold, no privilege supports the issuance of a protective order over the full breadth of communications between members of the state legislature, between state legislators and their staff, and between state legislators and their constituents. It is "clear that when a plaintiff asserts federal claims, federal privilege law governs." *In re Sealed Case*, 381 F.3d 1205, 1211 (D.C. Cir. 2004). Thus any applicable privilege in this case rests on federal common law. *See* Fed. R. Evid. 501; *In re Grand Jury Subpoena*, 438 F.3d 1141, 1166 (D.C. Cir. 2006); *see also United States v. Gillock*, 445 U.S. 360, 368 (1980) ("[T]he fact that there is an evidentiary privilege under the Tennessee Constitution, Art. II, § 13, which Gillock could assert in a criminal prosecution in state court does not compel an analogous privilege in a federal prosecution.").

"There is no state legislative privilege identified in the Federal Rules of Evidence and the D.C. Circuit has never recognized one." *Texas II*, 2012 WL 11241, at *4. *See generally* Order, *Allstate Ins. Co. v. Abbott*, No. 3:03-cv-2187 (N.D. Tex. June 1, 2004) (Doc. 119) (Ex. 5) (requiring the State of Texas to produce "all documents withheld on the basis of legislative, First Amendment or statutory privilege"); 26A Wright & Miller, *supra*, § 5685 ("The Supreme Court . . . has implied that federal law will recognize no privileges for state or local governmental entities." (citing *Gillock*, 445 U.S. at 371)). Nor has Texas met the heavy burden to establish that such a privilege should be newly recognized within this Circuit. "[W]hen evaluating a novel claim of privilege, '[courts] start with the primary assumption that there is a general duty to give what testimony one is capable of giving.'" *In re Sealed Case*, 148 F.3d 1073, 1076 (D.C. Cir. 1998) (quoting *Jaffee* v. *Redmond*, 518 U.S. 1, 9 (1996)); *see also Univ. of Pa. v. EEOC*, 493 U.S. 182, 189 (1990) (noting that evidentiary privileges "contravene the fundamental principle

that the public . . . has a right to every man's evidence" (alteration in original) (internal quotation marks omitted)).[6] Thus, "testimonial privileges 'must be strictly construed and accepted only to the very limited extent that permitting a refusal to testify . . . has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth.'" *In re Sealed Case*, 148 F.3d at 1076 (quoting *Trammel v. United States*, 445 U.S. 40, 50 (1980)); *see also id.* (requiring proponents to make "a compelling empirical case for the necessity of the privilege" (citing *Branzburg v. Hayes*, 408 U.S. 665, 693-94 & n.32 (1972)).

A. Legislative Immunity Is Inapplicable.

Much of Texas's motion is based on an erroneous conflation of state legislators' absolute immunity from civil suit and a testimonial privilege that, where it exists, is qualified at best. The Speech or Debate Clause of the U.S. Constitution, U.S. Const. art. I, § 6, cl. 1, shields federal legislators from any award of damages or prospective relief and provides an accompanying testimonial privilege. *See United States v. Gravel*, 408 U.S. 606, 614-15 (1972); *Rodriguez v. Pataki*, 280 F. Supp. 2d 89, 94 (S.D.N.Y. 2003), *aff'd* 293 F. Supp. 2d 302 (S.D.N.Y. 2003). However the Speech or Debate Clause does not apply to state or local legislators; nor have its full protections been extended to state officials via incorporation in federal common law. *See Gillock*, 445 U.S. at 368-73; *see also* Tex. Mem. at 2 (conceding this point). Rather, federal common law affords state legislators only with immunity from civil liability for their legislative acts. *See, e.g.*, *Tenney v. Brandhove*, 341 U.S. 367 (1951).

The State contends that the Supreme Court has consistently applied a "privilege" to state legislators that protects legislators and their staff from testifying about legislative acts. Tex.

[6] *See also United States v. Nixon*, 418 U.S. 683, 710 (1974) (denying an absolute testimonial privilege to the President of the United States); *Couch v. United States*, 409 U.S. 322 (1973) (rejecting an accountant-client privilege); *Branzburg v. Hayes*, 408 U.S. 665, 688 (1972) (denying a testimonial privilege to reporters).

Mem. at 2. However the cases on which the State relies concern only legislators' "common-law immunity from liability for their legislative acts." *Sup. Ct. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 732 (1980); *see also Bogan v. Scott-Harris*, 523 U.S. 44, 46 (1998) (extending immunity from suit to local officials acting in a legislative capacity). "Generally, legislators' immunity from suit is referred to as 'legislative immunity,' and the evidentiary privilege accorded legislators is referred to as the 'legislative privilege' . . . ." *Lindley v. Life Investors Ins. Co. of Am.*, No. 08-cv-379, 2009 WL 2245565, at *3 (N.D. Okla. 2009).[7] Individuals who are immune from suit may nonetheless be compelled to testify in a related case. *See Dennis v. Sparks*, 449 U.S. 24, 30 (1980) (noting that state judges enjoy immunity from civil suit but holding that "there is no similar constitutionally based privilege immunizing judges from being required to testify about their judicial conduct in third-party litigation").

The distinction between immunity and privilege is clearest in *United States v. Gillock*, in which the Supreme Court held that state legislators have no evidentiary privilege against the introduction of evidence of their legislative acts in a federal criminal prosecution. 445 U.S. at 373. *Gillock* recognized that, where "important federal interests are at stake," there is no basis to impose "a judicially created limitation that handicaps proof of the relevant facts." *Id.* at 373-74. Thus, in *Gillock*, the Supreme Court "rejected the notion that the common law immunity of state legislators gives rise to a general evidentiary privilege." *Manzi v. Dicarlo*, 982 F. Supp. 125, 129 (E.D.N.Y. 1997) (citing *Gillock*, 445 U.S. at 374); *see also In re Grand Jury (Granite Purchases)*, 821 F.2d 946, 957 (3d Cir. 1987); *Rodriguez*, 280 F. Supp. 2d at 100; *Kay v. City of*

[7] *See also Rodriguez*, 280 F. Supp. 2d at 95 (noting that legislative immunity and legislative privilege are different, yet often confused, concepts); *Fla. Ass'n of Rehabilitation Facilities, Inc. v. Dep't of Health & Rehabilitative Servs.*, 164 F.R.D. 257, 267 (N.D. Fla. 1995) (distinguishing "absolute immunity from suit" from "an evidentiary privilege").

Rancho Palos Verdes, No. 02-cv-03922, 2003 WL 25294710, at *11-14 (C.D. Cal. Oct. 10, 2003).

B. Any Qualified Legislative Privilege Must Yield in Voting Rights Act Cases Alleging Discriminatory Intent.

The State of Texas has failed to meet the heavy burden necessary to establish the existence of a previously unrecognized privilege in this Circuit. As noted above, a novel claim of privilege may be accepted only where the proponent has established via empirical proof that the service of a greater public good outweighs this Court's truth-seeking function. *See In re Sealed Case*, 148 F.3d at 1076. Faced with this ponderous burden, the State merely asserts that "reason" and "experience" demonstrate that a state legislative privilege is necessary to ensure an effective and state legislature. Tex. Mem. at 4.[8] However, in *Gillock*, the Supreme Court squarely held that a federal "evidentiary privilege for state legislators for their legislative acts" would provide "only speculative benefit to the state legislative process." 445 U.S. at 373. Nor has Texas provided empirical support for the benefit that would inure from creating the privilege it proposes.

Even if this Court were to recognize a novel privilege, any state legislative privilege would be a qualified privilege that could be overcome by a showing of need. *See, e.g.*,

[8] To the extent that Texas also argues that the Guaranty Clause, U.S. Const. art. IV, § 4, cl. 1, requires federal courts to establish a state legislative privilege, *see* Tex. Mem. at 4, the State seeks to overturn 160 years of jurisprudence establishing that the Clause is nonjusticiable. *See Luther v. Borden*, 48 U.S. 1, 42 (1849) ("Under this article of the Constitution it rests with Congress to decide what government is the established one in a State. For as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not."); *see also City of Rome v. United States*, 446 U.S. 156, 182 n.17 ("We do not reach the merits of the appellants' argument that the Act violates the Guarantee Clause, Art. IV, § 4, since that issue is not justiciable." (citing *Baker v. Carr*, 369 U.S. 186 (1962)); *Pac. States Tel. & Tel. Co. v. Oregon*, 223 U.S. 118, 143-49 (1912) ("'It was long ago settled that the enforcement of this guaranty belonged to the political department.'" (quoting *Taylor v. Beckham*, 178 U.S. 548, 578 (1900))).

Rodriguez, 280 F. Supp. 2d at 95.[9] As in previous instances, the United States easily makes this showing, given that the discovery sought – testimony of decision makers and documents related to the circumstances under which the Legislature enacted SB 14 – is central to the issue of discriminatory purpose.[10] Several courts adjudicating Voting Rights Act cases have thus held that a qualified privilege must yield when legislative purpose is directly at issue. *See, e.g.*, *Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, 2011 WL 4837508, at *7 (N.D.Ill. Oct. 12, 2011) (concluding that the enforcement of the Constitution and the Voting Rights Act outweighs a qualified legislator privilege). This flows from the proposition that

[9] Texas cites numerous decisions as having "recognized that the common-law legislative privilege likewise protects state legislators from testifying about legislative acts." Tex. Mem. at 3 & n.1. One decision provides only a limited privilege. *See Miles-Un-Ltd., Inc. v. Town of New Shoreham*, 917 F. Supp. 91, 100 (D.N.H. 1996) ("Although the doctrine of legislative immunity does apply in the personal testimony realm, the immunity does not extend to certain types of documentation requests."). The remaining cases have been expressly overruled. *See Berkley v. Common Council*, 63 F.3d 295, 303 (4th Cir. 1995) (overruling *Schlitz v. Commonwealth of Virginia*, 854 F.2d 43 (4th Cir. 1988)); *see also 2BD Assocs. Ltd. P'ship v. County Comm'rs of Queen Anne's County*, 896 F. Supp. 528, 531 (D. Md. 1995) (relying exclusively on *Schlitz* and its progeny); *Suhre v. Bd. of Comm'rs*, 894 F. Supp. 927, 932 (W.D.N.C. 1995) (same); *Marylanders for Fair Representation, Inc. v. Schaefer*, 144 F.R.D. 292, 298 (D. Md. 1992) (same). *Cano v. Davis*, which the State also cites, addresses waiver of a state legislative privilege but does not explore the scope of the privilege. *See* 193 F. Supp. 2d 1177, 1180 (C.D. Cal. 2002) (three-judge court) ("Whether an absolute or a qualified privilege should be recognized for state legislators' acts is a separate question from who should be permitted to waive the privilege once it attaches to an individual legislator's legislative acts.").

[10] *Rodriguez v. Pataki* identified five factors to be weighed to determine whether and to what extent a claim of legislative privilege must yield: "(i) the relevance of the evidence sought to be protected, (ii) the availability of other evidence, (iii) the seriousness of the litigation and the issues involved, (iv) the role of the government in the litigation, and (v) the possibility of future timidity by government employees who will be forced to recognize that their secrets are violable." 280 F. Supp. 2d at 100-01 (internal quotation marks and citations omitted); *see also Irvin*, 127 F.R.D. at 173 (setting out eight similar factors). Each factor weighs strongly in favor of denying the State of Texas's motion for a protective order. The evidence sought is highly relevant to the purpose inquiry and is in the sole possession of the state legislators that the state has identified as "likely to have information that bears significantly" on the purpose of SB 14. Plaintiff's Initial Disclosures at 2-4. The State brought this case, and the matters at issue in such Voting Rights Act litigation, contested by the United States, are the fundamental rights of citizens in a democracy; their seriousness cannot be overstated. *See Irvin*, 127 F.R.D. at 174; *Baldus*, 2011 WL 6122542, at *1. Finally, the possibility of "future timidity" on the part of Texas legislators and staff as a result of the requested discovery seems quite unlikely given the frequent testimony of Texas legislators in voting cases, both recently and in past decades. *See Gillock*, 445 U.S. at 373. Texas has a long history of contentious voting rights litigation. *See, e.g.*, *Session v. Perry*, 298 F. Supp. 2d 451, 471-

"although principles of comity command careful consideration" when a federal court seeks the testimony of a state official, "[w]here important federal interests are at stake . . . comity yields." *Gillock*, 445 U.S. at 373; *see also Irvin*, 127 F.R.D. at 173-74 (declining to apply a state legislative privilege because of the "compelling" federal interest in "vigorous and searching federal enforcement" of the Voting Rights Act); *cf. United States v. Nixon*, 418 U.S. 683, 706 (holding that when "privilege depends solely on the broad, undifferentiated claim of public interest in the confidentiality of . . . conversations, a confrontation with other values arises" and declining to establish absolute executive privilege).

In *United States v. Irvin*, the court faced a motion to compel deposition testimony regarding contemporaneous communications between County Supervisors and their staff concerning the adoption of Los Angeles County's redistricting plan, in a case where discriminatory intent was alleged. 127 F.R.D. at 170-71. Balancing the issues, the court determined that the depositions ought to go forward. *Id.* at 173-74. Citing *Arlington Heights*, the court found that the "withheld information is directly relevant to the validity of the redistricting plan" and concluded that "the federal interest in enforcement of the Voting Rights Act weighs heavily in favor of disclosure." *Id.* The court accordingly ordered that the qualified privilege at issue "must yield . . . to the need for disclosure." *Id.* at 174.

Similarly, in *Baldus v. Members of the Wisconsin Government Accountability Bd.*, No. 11-cv-562, 2011 WL 6122542 (E.D. Wis. Dec. 8, 2011) (three-judge court), the court was faced with a dispute similar to the one here. Private plaintiffs raising intentional discrimination claims under both the Voting Rights Act and the Equal Protection Clause sought document discovery and deposition testimony from a legislative staff member regarding the adoption of Wisconsin's

---

72 & nn.61-62 (E.D. Tex. 2004) (noting legislator's testimony), *rev'd sub nom. LULAC v. Perry*, 548 U.S. 399 (2006).

redistricting plan. *See id.* at *1. The Wisconsin Assembly and Senate, non-parties in the case, moved to quash. *See id.* The court noted that "proof of a legislative body's discriminatory intent is relevant and extremely important" for both the Voting Rights Act and constitutional claims raised and, relying on *Arlington Heights*, concluded that "any documents or testimony relating to how the Legislature reached its decision on the 2011 redistricting maps are relevant to the plaintiffs' claims as proof of discriminatory intent." *Id.* The court concluded that "legislative privilege does not apply in this case," given the nature of the case and plaintiffs' showing of need. *Id.* at *2. As in *Irvin*, the court balanced the interests and held that although the plaintiffs' requests might have "some minimal future 'chilling effect' on the Legislature, . . . that fact is outweighed by the highly relevant and potentially unique nature of the evidence." *Id.* The court likewise found disclosure was warranted "given the serious nature of the issues in this case and the government's role in crafting the challenged redistricting plans." *Id.*

III. Enforcement of the Constitutional Guarantee Against Intentional Discrimination Forecloses an Absolute State Legislative Privilege.

The issues before the Court on the State's motion for a protective order are the existence of a state legislative privilege and – if such a privilege is recognized – the application of that privilege to this case. The common law principles set out above place two primary considerations in the balance: the search for truth and a potential public interest in nondisclosure. *See, e.g.*, *United States v. Nixon*, 418 U.S. at 706. Nevertheless, the State of Texas attempts to inject its constitutional claims into this dispute, as it has done in nearly every aspect of this litigation. *See, e.g.*, Plaintiff's Memorandum in Opposition to Proposed TLBC Defendants-Intervenors' Motion to Intervene as Defendants at 4 (Doc. 41) (raising constitutional arguments in opposition to a motion to intervene and acknowledging that "the Court will grow tired of hearing [the State] repeat" its argument). However, the Court has bifurcated this case and ruled

that "Count II of the State of Texas's Amended Complaint alleging that Section 5 of the Voting Rights Act is unconstitutional shall not be addressed unless the Court denies judicial preclearance of Senate Bill 41." Initial Scheduling Order ¶ 1 (Doc. 43). Moreover, the doctrine of constitutional avoidance is a canon of statutory interpretation, and the State does not argue that the statutes at issue – the Federal Rules of Civil Procedure and the Federal Rules of Evidence – are unconstitutional. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001); *DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). Nor would imposition of an absolute legislative privilege resolve this case and thereby avoid the State's constitutional claims concerning Section 5. *Cf. Nw. Austin Mun. Utility Dist. No. 1*, 129 S. Ct. 2504, 2513 (2009). Therefore the Court should disregard the State's constitutional avoidance arguments.

The importance of the federal interest underpinning the court's truth-seeking function bears some relevance to this dispute because even an important public interest in nondisclosure must yield to a substantial federal purpose. *See Gillock*, 445 U.S. at 373. Discovery regarding the State's motivation in enacting SB 14 implicates the core guarantees of the Fourteenth and Fifteenth Amendments against intentional discrimination, *see, e.g.*, *Rogers v. Lodge*, 458 U.S. 613, 618-21 (1982), and reflects Congressional intent to ferret out discriminatory purpose prior to implementation in jurisdictions with a history of racial discrimination in voting, *see South Carolina v. Katzenbach*, 383 U.S. at 323-37. Thus, the federal interests at stake are at their apex and constitutional concerns are at their nadir. *See United States v. Georgia*, 546 U.S. 151, 158 (2006) ("No one doubts that" Congress has the authority to provide remedies for "*actual* violations" of the Constitution.); *cf. Tennessee v. Lane*, 541 U.S. 509, 529-34 (2004) (holding that a history of unconstitutional conduct against disabled individuals was sufficient grounds for

Congress to abrogate the states' Eleventh Amendment immunity).[11] Whether the means by which Congress has chosen to enforce those important federal interests impose federalism costs is far less relevant to the calculus under *Gillock*. *See* 445 U.S. at 373.

Section 5 of was crafted to thwart subtle and creative discrimination that had arisen since the decisions in *Guinn v. United States*, 238 U.S. 347 (1914), and *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). *See South Carolina v. Katzenbach*, 383 U.S. at 308-15. Discovery is necessary to determine the purposes of a sophisticated legislative body. *See Arizona v. Reno*, 887 F. Supp. at 322-23 ("[U]nder Arizona's view, the court could not even consider such evidence since the underlying electoral system is not 'blatantly' or 'starkly' discriminatory. This is not what Congress intended when it enacted section 5."); *cf. Smith v. Clarkton*, 682 F.2d 1055, 1064 (4th Cir. 1982) ("Municipal officials acting in their official capacities seldom, if ever, announce on the record that they are pursuing a particular course of action because of their desire to discriminate against a racial minority. Even individuals acting from invidious motivations realize the unattractiveness of their prejudices when faced with their perpetuation in the public record."). The absolute state legislative privilege requested by Texas would constitute unwarranted interference with Congress's chosen method to enforce core constitutional guarantees and is entirely unwarranted.

[11] Courts that have reached the question of the constitutionality of Section 5 have uniformly concluded that "Section 5 remains a 'congruent and proportional remedy' to the 21st century problem of voting discrimination in covered jurisdictions." *Shelby County v. Holder*, 811 F. Supp. 2d 424, 428 (D.D.C. 2011), appeal docketed, No. 11-5256 (D.C. Cir. argued Jan. 19, 2012); *see also LaRoque v. Holder*, No. 10-561, 2011 WL 6413850 (D.D.C. Dec. 22, 2011), appeal docketed, No. 11-5349 (D.C. Cir. Dec. 28, 2011). *See generally Lopez v. Monterey County*, 525 U.S. 266, 282-85 (1999) (upholding Section 5 against constitutional challenge); *City of Rome v. United States*, 446 U.S. 156, 172-82 (1980) (same); *Georgia v. United States*, 411 U.S. at 535 (same); *South Carolina v. Katzenbach*, 383 U.S. at 323-37 (same).

IV. CONCLUSION

The testimony and documents that the United States seeks are not protected by any privilege and are relevant and probative to the Section 5 purpose inquiry. Because Texas has no valid basis for the protective order it seeks, the United States respectfully requests that this Court deny the State's motion.

Date: March 29, 2012

Respectfully submitted,

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

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

/s/ Daniel J. Freeman
T. CHRISTIAN HERREN, JR.
MEREDITH BELL-PLATTS
ELIZABETH S. WESTFALL
BRUCE I. GEAR
JENNIFER L. MARANZANO
DANIEL J. FREEMAN
Attorneys
Voting Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2012, I served a true and correct copy of the foregoing via the Court's ECF system on the following counsel of record:

Jonathan Franklin Mitchell
Adam W. Aston
Matthew Hamilton Frederick
Office of the Attorney General of Texas
jonathan.mitchell@oag.state.tx.us
adam.aston@oag.state.tx.us
matthew.frederick@oag.state.tx.us

Counsel for Plaintiff

J. Gerald Hebert
hebert@voterlaw.com

Chad W. Dunn
Brazil & Dunn
chad@brazilanddunn.com

Counsel for Kennie Intervenors

Ryan Haygood
NAACP Legal Defense and Education Fund
rhaygood@naacpldf.org

Counsel for Texas League of Young Voters Intervenors

Mark A. Posner
Lawyers' Committee for Civil Rights
mposner@lawyerscommittee.org

Ezra David Rosenberg
Dechert LLP
ezra.rosenberg@dechert.com

Counsel for NAACP Intervenors

John Tanner
john.k.tanner@gmail.com

Counsel Texas Legislative Black Caucus Proposed Intervenors

Nina Perales
Mexican American Legal Defense & Educational Fund, Inc.
nperales@maldef.org

Counsel for Rodriguez Proposed Intervenors

/s/ Daniel J. Freeman
DANIEL J. FREEMAN
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
daniel.freeman@usdoj.gov

EXHIBIT

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, *Plaintiff*, v. ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES, *Defendant*. ERIC KENNIE, *et al.*, Defendant-Intervenors.	Civil Action No. 12-128 (DST, RMC, RLW)

PLAINTIFF'S INITIAL DISCLOSURES PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 26(A)

To: Defendant Eric H. Holder, Jr., by and through his attorney of record, Elizabeth S. Westfall, United States Department of Justice, 950 Pennsylvania Avenue, NW Room 7203, Washington, DC 20530.

Plaintiff the State of Texas hereby submits its Initial Disclosures to Defendant Eric Holder, Attorney General of the United States, and Defendant-Intervenors, pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure.

Plaintiff reserves the right to supplement these Initial Disclosures as additional discovery, investigation, and analysis may warrant. Plaintiff also does not waive any protections provided by the attorney-client privilege, attorney work-product doctrine, or any other applicable privilege, protection, doctrine, or immunity. Plaintiff likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of the information contained in these Initial Disclosures; and (2) discovery requests relating to these Initial Disclosures.

PLAINTIFF'S INITIAL DISCLOSURES

A. The name, and if known, the address and telephone number of each person likely to have information that bears significantly on any claim or defense, identifying the subjects of the information and a brief, fair summary of the substance of the information known by these persons.

1. The Honorable Patricia Harless
   Texas House of Representatives
   c/o Jonathan Mitchell
   Office of the Attorney General
   P.O. Box 12548
   Austin, Texas 78711-2548
   (512) 936-1695

Representative Harless sponsored SB 14 in the Texas House of Representatives. As the sponsor of SB 14, Representative Harless may have information concerning the goals of the legislation, debates regarding the legislation, amendments to the bill that were offered and considered, and any other matters related to SB 14 and the State's efforts to comply with state and federal law, including the Voting Rights Act, in the passage of this legislation.

2. The Honorable Aaron Peña
   Texas House of Representatives
   c/o Jonathan Mitchell
   Office of the Attorney General
   P.O. Box 12548
   Austin, Texas 78711-2548
   (512) 936-1695

Representative Peña was a joint sponsor of SB 14 in the Texas House of Representatives. As a joint sponsor of SB 14, Representative Peña may have information concerning the goals of the legislation, debates regarding the legislation, amendments to the bill that were offered and considered, and any other matters related to SB 14 and the State's efforts to comply with state and federal law, including the Voting Rights Act, in the passage of this legislation.

3. The Honorable Larry Gonzales
   Texas House of Representatives
   c/o Jonathan Mitchell
   Office of the Attorney General
   P.O. Box 12548
   Austin, Texas 78711-2548
   (512) 936-1695

Representative Gonzales was a co-sponsor of SB 14 in the Texas House of Representatives. As a co-sponsor of SB 14, Representative Gonzales may have information concerning the goals of the legislation, debates regarding the legislation, amendments to the bill that were offered and considered, and any other matters related to SB 14 and the State's efforts to comply with state and federal law, including the Voting Rights Act, in the passage of this legislation.

4. The Honorable Jose Aliseda
   Texas House of Representatives
   c/o Jonathan Mitchell
   Office of the Attorney General
   P.O. Box 12548
   Austin, Texas 78711-2548
   (512) 936-1695

Representative Aliseda was a co-sponsor of SB 14 in the Texas House of Representatives. As a co-sponsor of SB 14, Representative Aliseda may have information concerning the goals of the legislation, debates regarding the legislation, amendments to the bill that were offered and considered, and any other matters related to SB 14 and the State's efforts to comply with state and federal law, including the Voting Rights Act, in the passage of this legislation.

5. The Honorable Troy Fraser
   Texas Senate
   c/o Jonathan Mitchell
   Office of the Attorney General
   P.O. Box 12548
   Austin, Texas 78711-2548
   (512) 936-1695

Senator Fraser authored SB 14 in the Texas House of Representatives. As the author of SB 14, Senator Fraser may have information concerning the goals of the legislation, debates regarding the legislation, amendments to the bill that were offered and considered, and any other matters related to SB 14 and the State's efforts to comply with state and federal law, including the Voting Rights Act, in the passage of this legislation.

6. Janice McCoy
   Chief of Staff to the Honorable Troy Fraser
   Texas Senate
   c/o Jonathan Mitchell
   Office of the Attorney General
   P.O. Box 12548
   Austin, Texas 78711-2548

(512) 936-1695

Ms. McCoy assisted with the passage of SB 14 in the Texas Senate. She communicated directly with Senate members and committee members regarding their concerns and suggestions on SB 14 as well as amendments.

7. Colby Bueck
   Chief of Staff to the Honorable Patricia Harless
   Texas House of Representatives
   c/o Jonathan Mitchell
   Office of the Attorney General
   P.O. Box 12548
   Austin, Texas 78711-2548
   (512) 936-1695

Mr. Bueck assisted with the passage of SB 14 in the Texas House of Representatives. He communicated directly with House members and committee members regarding their concerns and suggestions on SB 14 as well as amendments.

8. Keith Ingram
   Director of Elections
   Texas Secretary of State
   c/o Jonathan Mitchell
   Office of the Attorney General
   P.O. Box 12548
   Austin, Texas 78711-2548
   (512) 936-1695

Mr. Ingram participated in the administrative preclearance process of SB 14 and may have knowledge regarding the data that was provided to the Department of Justice during the administrative preclearance process on registered voters in Texas.

B. A copy of all documents, data compilations, and tangible things in the possession, custody, or control of the party that is likely to bear significantly on any claim or defense.

The following documents will be made available to the Defendant and Defendant-Intervenors on a rolling basis.

<u>Senate Bill 14, 82nd Texas Legislature</u>

1. January 24, 2011 Texas Senate Committee-As-A-Whole Hearing Notice

2. January 24, 2011 Texas Senate Committee-As-A-Whole Hearing Minutes
3. January 25, 2011 Texas Senate Committee-As-A-Whole Hearing Notice
4. January 25, 2011 Texas Senate Committee-As-A-Whole Hearing Minutes
5. January 25, 2011 Texas Senate Committee-As-A-Whole Hearing Witness List
6. January 24, 2011 Texas Senate Journal
7. January 25, 2011 Texas Senate Journal
8. January 26, 2011 Texas Senate Journal – Senate Bill 14 Floor Debate
9. April 5, 2011 Texas Senate Journal
10. May 9, 2011 Texas Senate Journal
11. March 1, 2011 Texas House of Representatives Hearing Notice
12. March 1, 2011 Texas House of Representatives Hearing Witness List
13. March 1, 2011 Texas House of Representatives Hearing Corrected Minutes
14. March 7, 2011 Texas House of Representatives Hearing Notice
15. March 7, 2011 Texas House of Representatives Hearing Minutes
16. March 15, 2011 Texas House of Representatives Hearing Notice
17. March 21, 2011 Texas House of Representatives Hearing Minutes
18. March 21, 2011 Texas House of Representatives Hearing Notice
19. March 21, 2011 House Journal – Senate Bill 14 Floor Debate
20. March 23, 2011 House Journal – SB 14 Floor Debate
21. March 24, 2011 House Journal
22. April 8, 2011 House Journal
23. May 16, 2011 House Journal
24. Senate Bill 14 Texas House of Representatives Committee Report – Bill Analysis
25. Senate Bill 14 Texas House of Representatives Committee Report – Bill Text
26. Senate Bill 14 Introduced Version – Bill Text
27. Senate Bill 14 Texas Senate Committee Report – Bill Text
28. Senate Bill 14 Enrolled Version – Bill Text
29. Senate Bill 14 Enrolled Version – Bill Analysis
30. Senate Bill 14 Engrossed Version – Bill Text
31. Senate Bill 14 Conference Committee Report

<u>Senate Bill 362, 81st Texas Legislature</u>

1. March 10, 2009 Texas Senate Committee Hearing Notice
2. March 10, 2009 Texas Senate Committee Hearing Minutes
3. March 10, 2009 Texas Senate Committee Hearing Witness List
4. March 11, 2009 Texas Senate Journal
5. March 17, 2009 Texas Senate Journal
6. April 6, 2009 Texas House of Representatives Committee Hearing Notice
7. April 6, 2009 Texas House of Representatives Committee Hearing Minutes
8. April 7, 2009 Texas House of Representatives Hearing Notice
9. April 7, 2009 Texas House of Representatives Hearing Minutes
10. May 11, 2009 Texas House of Representatives Hearing Notice

11. May 11, 2009 Texas House of Representatives Hearing Minutes
12. November 2009 Texas House of Representatives Committee Interim Charges
13. June 14, 2010 Texas House of Representatives Interim Hearing Notice
14. June 14, 2010 Texas House of Representatives Hearing Witness List
15. March 31, 2009 House Journal
16. Senate Bill 362 Introduced Version - Text
17. Senate Bill 362 Introduced Version – Bill Analysis
18. Senate Bill 362 Texas Senate Committee Report – Text
19. Senate Bill 362 Texas House of Representatives Committee Report – Text
20. Senate Bill 362 Texas House of Representatives Committee Report – Bill Analysis
21. Senate Bill 362 Texas House of Representatives Research Organization Bill Analysis
22. Senate Bill 362 Engrossed Version – Text

C. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34, the documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered.

Not applicable.

D. For inspection and copying, any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Not applicable.

E. A party shall disclose to other parties the identity of any person who may be used in trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence.

Plaintiff will disclose expert witnesses in accordance with the Court's scheduling order.

Dated: March 20, 2012

Respectfully Submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

/s/ *Jonathan F. Mitchell*
JONATHAN F. MITCHELL
Solicitor General
209 West 14th Street
P.O. Box 12548
Austin, TX 78711-2548
(512) 936-1695

COUNSEL FOR PLAINTIFF
THE STATE OF TEXAS

CERTIFICATE OF SERVICE

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:

Elizabeth S. Westfall
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 353-0099
elizabeth.westfall@usdoj.gov

Counsel for Defendant

Chad W. Dunn
Brazil & Dunn
chad@brazilanddunn.com

J. Gerald Hebert
hebert@voterlaw.com

Counsel for Kennie Intervenors

Mark A. Posner
Lawyers' Committee for Civil Rights
mposner@lawyerscommittee.org

Ezra Rosenberg
Dechert LLP
ezra.rosenberg@dechert.com

Myrna Perez
Brennan Center for Justice
myrna.perez@nyu.edu

Jose Garza
garzpalm@aol.com

Counsel for NAACP and MALC Intervenors

/s/ *Jonathan F. Mitchell*
Jonathan F. Mitchell
Solicitor General

EXHIBIT

2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA, and ERIC H. HOLDER, JR. in his official capacity as Attorney General of the United States, Defendants, WENDY DAVIS, *et al.*, Defendant-Intervenors.	)	Case No. 1:11-CV-01303 (RMC-TBG-BAH) [Three-Judge Panel]

JOINT NOTICE OF TRIAL WITNESSES

The parties designate the following individuals as witnesses who may testify at trial.

Witnesses who may testify before three judges on direct examination:

Texas
Doug Davis
Ryan Downton
David Hanna
Representative Todd Hunter
Gerardo Interiano
Representative Jose Aliseda**
Representative John Garza**

United States/Intervenors
Roy Brooks**
Representative Garnet Coleman
Senator Wendy Davis
Representative Dawnna Dukes
Senator Rodney Ellis
Representative Joe Farias**
Alex Jiminez
United States Representative Eddie Bernice Johnson

George Korbel**
** These persons will testify live in front of two judges if there is not time for three judges.

United States/Intervenors
United States Representative Shiela Jackson Lee
Jaime Longoria
Senator Jose Rodriguez
Judge David Saucedo
Mike Siefert
Representative Marc Veasey
Senator Judith Zaffirini

Witnesses who may testify through pre-filed direct testimony:

Texas
Dr. John Alford
Representative Charlie Geren
Todd Giberson
Representative Joe Pickett
Senator Kel Seliger
Senator Florence Shapiro
Representative Burt Solomons
Dr. Richard Engstrom[1]

United States/Intervenors
Dr. Stephen Ansolabehere
Dr. Theodore Arrington
Rogene Calvert
Sergio DeLeon
Dr. Richard Engstrom
David Escamilla
Dr. Henry Flores
United States Representative Al Green
Dr. Lisa Handley
Abel Herrero
Representative Scott Hochberg
Dr. Morgan Kousser
Dr. Alan Lichtman

---

[1] Texas reserves the right to call other witnesses of the United States and Intervenors via deposition testimony in accordance with the Federal Rules of Civil Procedure, but also intends at this time to provide written direct testimony of Dr. Engstrom in its case in chief.

Dr. Richard Murray
Boyd Ritchie
Dean Rogelio Saenz
Representative Sylvester Turner

Dated: December 28, 2011.

Respectfully Submitted,

On behalf of the State of Texas:

GREG ABBOTT
Attorney General of Texas
DANIEL T. HODGE
First Assistant Attorney General
BILL COBB
Deputy Attorney General for Civil Litigation
DAVID C. MATTAX
Director of Defense Litigation
/s/ David J. Schenck
DAVID J. SCHENCK
Deputy Attorney General for Legal Counsel
J. REED CLAY, JR.
Special Assistant and Senior Counsel to the Attorney General
BRUCE D. COHEN
Special Assistant to the Attorney General
Office of the Attorney General
P.O. Box 12548, Capitol Station
209 W. 14th Street
Austin, Texas 78701
(512) 936-1342 / (512) 936-0545 (fax)
ATTORNEYS FOR THE STATE OF TEXAS

On Behalf of the Attorney General and the United States of America:

/s/ Timothy F. Mellett
T. CHRISTIAN HERREN, JR.
TIMOTHY F. MELLETT
BRYAN SELLS
JAYE ALLISON SITTON
OLIMPIA E. MICHEL
T. RUSSELL NOBILE
DANIEL J. FREEMAN
MICHELLE A. MCLEOD
Voting Section, Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

On Behalf of the Mexican American Legislative Caucus:

/s/ Jose Garza
JOSE GARZA
Law Office of Jose Garza
7414 Robin Rest Dr.
San Antonio, TX 98209

/s/ Mark A. Posner
JON GREENBAUM
MARK A. POSNER
Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue NW, Suite 400
Washington, DC 20005

JOAQUIN G. AVILA
P.O. Box 33687
Seattle, WA 98133

On Behalf of the Gonzalez Intervenors:

/s/ John M. Devaney
JOHN M. DEVANEY
MARK ERIK ELIAS
KEVIN J. HAMILTON
Perkins Coie LLP
700 13th Street NW, Suite 600
Washington, DC 20005

/s/ Renea Hicks
RENEA HICKS
Law Office of Max Renea Hicks
101 West 6th St.
Austin, TX 78701

On Behalf of the Texas Legislative Black Caucus:

/s/ John K. Tanner
JOHN K. TANNER
3743 Military Road NW
Washington, DC 20015

On Behalf of the Davis Intervenors:

/s/ J. Gerald Hebert
J. GERALD HEBERT
191 Somervelle Street
Suite 405
Alexandria, VA 22304

PAUL M. SMITH
MICHAEL DESANCTIS
JESSICA RING AMUNSON
CAROLINE LOPEZ
Jenner & Block LLP
1099 New York Ave. NW
Washington, DC 20001

On Behalf of the Texas Latino Redistricting Task Force:

/s Nina Perales
NINA PERALES
MARISA BONO
REBECCA M. COUTO
Mexican American Legal Defense & Educational Fund
110 Broadway, Suite 300
San Antonio, TX 78205

KAREN M. SOARES
JORGE M. CASTILLO
Fried, Frank, Harris, Shriver & Jacobson LLP
801 17th St. NW
Washington, DC 20006

On Behalf of the League of United Latin American Citizens

/s/ Luis Roberto Vera, Jr.
LUIS ROBERTO VERA, JR.
League of United Latin American Citizens
111 Soledad St., Suite 1325
San Antonio, TX 78205

On Behalf of the Texas State Conference of NAACP Braches:

/s/ Allison J. Riggs

ALLISON J. RIGGS
Southern Coalition for Social Justice
1415 West Highway 54, Suite 101
Durham, NC 27707

ROBERT S. NOTZON
Law Office of Robert S. Notzon
1507 Nueces Street
Austin, TX 78701

GARY L. BLEDSOE
Law Office of Gary L. Bledsoe and Associates
316 West 12th Str., Suite 307
Austin, TX 78701

VICTOR GOODE
Assistant General Counsel
NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215

EXHIBIT

3

DIST.	OFF.	DOCKET YR.	DOCKET NUMBER	FILING DATE MO.	DAY	YR.	J	N/S	O	D PTF	D DEF	R 23	$ DEMAND	JUDGE/ MAG. NO.	COUNTY	JURY DEM.	DOCKET YR.	DOCKET NUMBER
0090	1	82	0665	03	08	82	2	441	1				Nearest $1,000	J 9045 M	08888	N	82	0665

TITLE: BUSBEE, ET AL V SMITH, ET AL

CAUSE: SEC.5, VOTING RIGHTS ACT OF 1965.

ROBINSON, J.
JUNE L. GREEN, J.
EDWARDS, J.(USCA)

\# 1 PLA
GEORGE D. BUSBEE
GOVERNOR OF THE ST. OF GEORGIA

\# 2 PLA
ZELL MILLER
LT.GOV. OF GEORGIA.

\# 3 PLA
MICHAEL J. BOWERS
ATTY.GEN. OF GEORGIA.

\# 4 PLA
THOMAS B. MURPHY
SPEAKER OF HOUSE REPS.,GA.

JOSEPH W. DORN
SUITE 500
2501 M STREET, NW
WASHINGTON DC 20037
833-8000

\# 5 DFT
WILLIAM FRENCH SMITH
ATTORNEY GENERAL OF THE U.S.

ELLEN M. WEBER
DEPT.JUSTICE, CIVIL RTS.DIV.
10TH & PENNSYLVANIA AVENUE, N.W.
WASHINGTON DC 20530
724-6264

\# 6 DFT
WILLIAM BRADFORD REYNOLDS
ASST.ATTY.GENERAL OF THE U.S.

\# 7 DFT
UNITED STATES OF AMERICA

\# 8 INTV.DFT
WILLIAM C. (BILLY) RANDALL JR.
CHAIR OF LEG.BLACK CAUC.,GA.

FRANK PARKER
SUITE 520
733 15TH STREET, N.W.
WASHINGTON DC 20005
628-6700

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	
				JS-6	

DIST.	OFF.	DOCKET YR.	DOCKET NUMBER	FILING DATE MO.	DAY	YR.	J	N/S	O	D PTP	D DEF	R 23	$ DEMAND	JUDGE/ MAG. NO	COUNTY	JURY DEM.	DOCKET YR.	DOCKET NUMBER
0090	1	82-	0665	03/	08/	82	2	441	1				Nearest $1,000	J 9045 M	88888	N	82-	0665

TITLE: BUSBEE, ET AL V SMITH, ET AL.

CAUSE: SEC.5, VOTING RIGHTS ACT OF 1965.

ROBINSON, J.

JUNE L. GREEN, J.

EDWARDS, J.(USCA)

* 9 INTV.DFT
J.E. (BILLY) MCKINNEY
MEMBER OF GA.HOUSE OF REP.

* 10 INTV.DFT
DOUGLAS DEAN
MEMBER OF GA.HOUSE OF REPS.

* 11 INTV.DFT
J[illegible]AN BOND
MEMBER OF THE GEORGIA SENATE

* 12 INTV.DFT
HORACE TATE
MEMBER OF THE GEORGIA SENATE

* 13 INTV.DFT
ALVEDA KING BEAL
MEMBER OF GA.HOUSE OF REPS.

* 14 INTV.DFT
LORENZO BENN
MEMBER OF GA.HOUSE OF REPS.

* 15 INTV.DFT
TYRONE BROOKS
MEMBER OF GA.HOUSE OF REPS.

* 16 INTV.DFT
J.C. DAUGHTERY SR.
MEMBER OF GA.HOUSE OF REPS.

* 17 INTV.DFT
B[illegible] HOLMES
MEMBER OF GA.HOUSE OF REPS.

* 18 INTV.DFT
DAVID SCOTT
MEMBER OF GA.HOUSE OF REPS.

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	
				JS-6	

UNITED STATES DISTRICT COURT DOCKET

DC-111 (Rev. 7/80)

DIST.	OFF.	DOCKET YR.	DOCKET NUMBER	FILING DATE MO.	DAY	YR.	J	N/S	O	D PTF	D DEF	R 23	$ DEMAND	JUDGE/ MAG. NO.	COUNTY	JURY DEM.	DOCKET YR.	DOCKET NUMBER
0090	1	82	-0665	03	08	82	2	441	1				Nearest $1,000	J 9045 M	88888	N	82	-0665

TITLE: BUSBEE, ET AL V SMITH, ET AL

CAUSE: SEC.5, VOTING RIGHTS ACT OF 1965.

ROBINSON, J.

JUNE L. GREEN, J.

EDWARDS, J. (USCA)

\# 19 INTV.DFT
HOSEA L. WILLIAMS
MEMBER OF GA.HOUSE OF REPS.

\# 20 INTV.DFT
R.A. DENT
MEMBER OF GA.HOUSE OF REPS.

\# 21 INTV.DFT
CA[illegible]IN SMYRE
MEMBER OF GA.HOUSE OF REPS.

\# 22 INTV.DFT
SANFORD D. BISHOP JR.
MEMBER OF GA.HOUSE OF REPS.

\# 23 INTV.DFT
DAVID E. LUCAS
MEMBER OF GA.HOUSE OF REPS.

\# 24 INTV.DFT
BOBBY L. HILL
MEMBER OF GA.HOUSE OF REPS.

\# 25 INTV.DFT
JOHN WHITE
MEMBER OF GA.HOUSE OF REPS.

\# 26 INTV.DFT
RAYMOND BROWN

\# 27 INTV.DFT
J.J. JONES

\# 28 INTV.DFT
DUANE MCMAHON

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	
				JS-6	

UNITED STATES DISTRICT COURT DOCKET

DC-111 (Rev. 7/80)

DC 111A
(Rev. 1/75)

ROBINSON, J.

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR—7-14-80-70M-4388

PLAINTIFF	DEFENDANT	DOCKET NO. 82-0665
GEORGE D. BUSBEE, et al.	WILLIAM FRENCH SMITH, et al.	PAGE 1 OF ___ PAGES

DATE	NR.	PROCEEDINGS
1982 Mar 8	1	COMPLAINT; exhibits A and B; appearance.
Mar 8		SUMMONS (5) issued.
Mar 8	2	APPLICATION of pltfs. for a three-judge court.
Mar 8	3	MOTION of pltfs. to expedite proceedings; statement of P&A's; exhibits A and B.
Mar 8	4	INTERROGATORIES (first) of pltfs. to defts.
Mar 8	5	REQUEST (first) of pltfs. for production of documents.
Mar 8	6	REQUEST of pltfs. for appointment of special process server and ORDER by Clerk appointing Elaine Rihtarchik to serve summons and complaint upon defts.
Mar 9	7	AFFIDAVIT of Elaine S. Rihtarchik of service of summons and complaint upon deft.#1 on March 8, 1982
Mar 9	8	AFFIDAVIT of Elaine S. Rihtarchik of service of summons and complaint upon deft.#2 on March 8, 1982
Mar 9	9	AFFIDAVIT of Elaine S. Rihtarchik of service of summons and complaint upon deft.#3 to U.S. Attorney's Office and by certified mail to the Attorney General.
Mar 9		MOTION of pltf. to expedite proceeding, heard and granted. (Rep; Robert Weber) ROBINSON, J.
Mar 10	9a	DESIGNATION of the Honorable June L. Green, United States District Judge and the Honorable Harry T. Edwards, United States Circuit Judge, to serve with the Honorable Aubrey E. Robinson, Jr., United States District Judge, as members of a three judge court to hear and determine this case. ROBINSON, C.J. (USCA)
Mar 12	10	ORDER filed 3-9-82, that defts. answer complaint within 10 days after service; parties to file their responses to written discovery within 15 days after receipt thereof; discovery to be completed by 5-1-82; trial to commence on 5-13-82. (N) EDWARDS, J. (USCA), ROBINSON, J., GREEN, J.
Mar 12	11	PETITION of William C. Randall, Jr. et al; memo in support; exhibit; (answers); $5.00 USDC fee paid and credited to U.S. Treasury' (Appearance: Frank Parker, 733-15th Street, N.W. #520; 20005; (202) 628-6700).
Mar 15	12	INTERROGATORIES (second) of pltfs to defts.

SEE NEXT PAGE

DC 111A
(Rev. 1/79)

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR—7-14-80-70M-4398

PLAINTIFF	DEFENDANT	DOCKET NO. 82-0665
BUSBEE, et al.	SMITH, et al.	PAGE 2 OF ____ PAGES

DATE	NR.	PROCEEDINGS
1982 Mar 17	13	ANSWER of defts. to complaint.
Mar 17	1	CALENDARED. CD/N
Mar 17	14	MOTION by defts. to dismiss William F. Smith and William Bradford Reynolds, in their individual capacities, as defts; memo;.
Mar 17	15	RESPONSE of defts. to ptlfs' first interrogatories; declaration of Ellen M. Weber.
Mar 17	16	RESPONSE of defts. to pltfs' first request for production of documents.
Mar 17	17	STATEMENT of Points and authorities by pltfs. in opposition to the punitive deft/internevors' petition for leave to intervene; table of contents; exhibits A&B.
Mar 18	18	ORDER filed 3-16-82, that responses to Motion to intervene to be filed by 3.19-82. (N) ROBINSON, J.
Mar 18	19	MEMORANDUM of the U.S. in response to motion for leave to intervene.
Mar 18	20	SUPPLEMENTAL STATEMENT of points and authorities by pltfs' in opposition to the puntative deft/intervenors' petition for leave to intervene.
Mar 19	21	INTERROGATORIES of defts to pltfs (set one).
Mar 19	22	REQUEST (first) of defts for production of documents.
Mar 22	23	REPLY BRIEF of William C. (Billy) Randall, Jr. et al in support of their petition to intervene.
Mar 23	24	ORDER filed 3-19-82 granting defts' motion to dismiss William French Smith and William Bradford Reynolds in their individual capacities as defts. (N) ROBINSON, J.
MaR 23	25	ORDER filed 3-22-82 granting petition of William C. (Billy) Randall Jr. et al to intervene as defts. (N) ROBINSON, J.
Mar 23	26	ANSWER of deft intervenors to the complaint.
Mar 25	27	RESPONSE of defts to pltfs' second interrogatories.
Mar 29	28	INTERROGATORIES (third) of pltfs to each deft-intervenor.
Mar 29	29	REQUEST (second) of pltfs for production of documents to deft-inter.

SEE NEXT PAGE

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR—7-14-80-70M-4398

PLAINTIFF	DEFENDANT	DOCKET NO. 82-665
BUSBEE, et al	SMITH, et al	PAGE 3 OF ___ PAGES

DATE 1982	NR.	PROCEEDINGS
Apr 1	30	NOTICE of pltfs to take the depositions of William Bradford Reynolds and Gerald W. Jones.
Apr 2	31	MOTION of pltfs for partial summary judgment; statement of material facts; statement of PA's; affidavit of Linda D. Meggers w/ exhibits A thru D.
Apr 5	32	RESPONSE of deft-intervenors to pltfs' first request for production of documents.
Apr 5	33	RESPONSE of deft-intervenors to pltfs' first interrogatories.
Apr 5	34	RESPONSE of deft-intervenors to pltfs' second interrogatories.
Apr 5	35	REQUEST (first) of deft-intervenors for production of documents addressed to each pltf.
Apr 5	36	INTERROGATORIES (first) of deft-intervenors addressed to each ptlf.
Apr 5	37	INTERROGATORIES (second set) of deft-intervenors addressed to each pltf.
Apr 5	38	INTERROGATORIES (third set) of deft-intervenors to pltfs.
Apr 6	39	MOTION of Atlanta Branch NAACP; et al for leave to intervene; memo in support; exhibits A and B; exhibit (answer); (Appearance: Lezli Baskerville, 1025 Vermont Avenue, NW, 820; 20005 (202) 638-2269). $5.00 fee paid and credited to U.S. Treasury.
Apr 7	40	RESPONSE of pltfs to defts' first request for production.
Apr 7	41	RESPONSE of pltfs to defts' interrogatories (set 1).
Apr 7	42	MOTION of defts for a protective order that certain depositions not be taken and for an order quashing subpoenas; memo in support.
Apr 7	43	ORDER that responses to petition of Atlanta Branch NAACP et al to intervene as defts to be filed by 4-14-82. (N) ROBINSON, J.
Apr 7	44	ORDER that commencing with response to defts' motion for protective order, all responses to motions to be filed on or before 5 days following filing of motions. (N) ROBINSON, J.

SEE NEXT PAGE

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR—7-14-80-70M-4398

PLAINTIFF	DEFENDANT	DOCKET NO. 82-665
BUSBEE, et al	SMITH, et al	PAGE 4 OF ___ PAGES

DATE 1982	NR.	PROCEEDINGS
Apr 9	45	STATEMENT OF P&A'S of pltfs in opposition the petition for leave to intervene of the Atlanta Branch, NAACP, et al.
Apr 9	46	MEMO of pltfs in opposition to defts' motion for protective order.
Apr 12	47	MOTION of defts for order compelling discovery; exhibits A, B, C; memo of P&A's.
Apr 12	48	RESPONSE of defts to pltfs' motion for partial summary judgment; statement of material facts.
Apr 13	49	REPLY MEMORANDUM of defts in support of their motion for a protective order that certain depositions not be taken and for an order quashing subpoenas.
Apr 13	50	RESPONSE pf deft-intervenor to the petition for leave to intervene of the Atlanta Branch, NAACP, et al
Apr 13	51	NOTICE (first) of deft-intervenor to produce to pltfs.
Apr 13	52	NOTICE (first) of deft-intervenor to take the deposition of Linda Meggers; Rep. Joe Mack Wilson; Sen Perry Hudson; Sen Terrell Starr; Rep. Benson Hamm; Rep. Godbee; Rep. Thomas Murphy; Lt Gov Zell Miller; Gov George Busbee; Martha Jean Brown and Louise Sommers.
Apr 13	53	ORDER granting defts' motion for protective order except with respect to deposition of Hallue Wright; granting defts' motion to quash except with respect to subpoena duces tecum served upon Hallue Wright. (N) ROBINSON, J.
Apr 15	54	NOTICE of pltfs to take the deposition of Susan Nalls.
Apr 15	55	NOTICE of pltfs to take the deposition of Julian Bond.
Apr 15	56	NOTICE of pltfs to take the deposition of Paul D. Coverdell.
Apr 15	57	NOTICE of pltfs to take the deposition of William C. (Billy) Randall
Apr 15	58	NOTICE of defts to take the depositions of Linda Meggers, Penelope Williams and each member of the reapportionment staff; attachments A, B, and C.
Apr 15	59	MOTION of pltfs for protective order as to certain depositions; statement of P&A's; exhibit A.

SEE NEXT PAGE

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR—7-14-80-70M-4900

PLAINTIFF	DEFENDANT	DOCKET NO. 82-665
BUSBEE, et al	SMITH, et al	PAGE 5 OF ___ PAGES

DATE 1982	NR.	PROCEEDINGS
Apr 16	60	RESPONSE of deft-intervenors to pltfs' motion for partial summary judgment; statement of genuine issues for trial; affidavit of David Walbert.
Apr 16	61	RESPONSE of deft-intervenors to pltfs' second request for production of documents.
Apr 16	62	RESPONSE of deft-intervenors to pltfs' third interrogatories.
Apr 16	63	REPLY BRIEF of pltfs in support of pltfs' motion for partial summary judgment.
Apr 16	64	SUPPLEMENTAL AFFIDAVIT of Linda D. Meggers.
Apr 16	65	MEMORANDUM of pltfs in opposition to Federal Defts' motion for order compelling discovery; exhibit A.
Apr 16	66	MOTION of pltfs for pretrial case management order; statement of [illegible]
Apr 16	67	MEMORANDU[illegible] he United States in opposition to pltfs' motion for a protective order.
Apr 19	68	REPLY BRIEF of pltfs in support of pltfs' motion for protective order.
Apr 20	69	MOTION of pltfs for protective order as to deft-intervenors second notice of depositions; exhibit A; statement of P&A's.
Apr 20	70	RESPONSES ofpltfs to deft-intervenors' first request for productio of documents, addressed to each pltf.
Apr 20	71	RESPONSES of pltfs to deft-intervenors' first interrogatories.
Apr 20	72	RESPONSES of pltfs to deft-intervenors' second set of interrogatories.
Apr 20	73	RESPONSES of pltfs to deft-intervenors' third set of interrogatories.
Apr 20	74	MEMORANDUM of the U.S. in response to pltfs' motion for a pretrial case management order.
Apr 21	75	BRIEF of deft-intervenors Randall et al in response to pltfs' motion for protective order as to certain depositions and pltf's motion for pretrial case management order.

SEE NEXT PAGE

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

FPI—MAR—7-14-80-70M-4398

PLAINTIFF	DEFENDANT	DOCKET NO. 82-665
BUSBEE, et al	SMITH, et al	PAGE 6 OF ___ PAGES

DATE 1982	NR.	PROCEEDINGS
Apr 21	76	ORDER filed 4-19-82 denying Petition of Atlanta Branch NAACP, et al to intervene as defts; petitioners for intervention may participate as amicus curiae. (N) ROBINSON, J.
Apr 21	77	NOTICE (second) of deft-intervenors Randall, et al to take the depositions of Susan Nalls; Paul D. Coverdell; Julian Bond; William C. (Billy) Randall, Jr.
Apr 21	78	MOTION of deft-intervenors Randall, et al to compel discovery; memo in support.
Apr 21	79	MOTION of deft-intervenors Randall, et al to shorten time to respond to deft-intervenors motion to compel discovery; memo in support.
Apr 22	80	MEMORANDUM of pltfs in opposition to deft-intervenors' motion to compel discovery.
Apr 21		MOTION of pltfs for partial summary judgment; motion of deft intervenor, Randall, et al to compel discovery; motion of pltfs for pretrial case management order; motion of pltfs for protective order as to certain depositions; and motion of defts for order compelling discovery, heard and taken under advisement (Rep: Robert Weber) ROBINSON, J.
Apr 23	81	MOTION of pltfs for expedited determination of pending motion for partial summary judgment and for stay of the Court's discovery order of 4-22-82; statement of P&A's.
Apr 23	82	ORDER filed 4-22-82 denying pltf's motion for protective order; denying pltfs' motion for pretrial case management order; holding in abeyance defts' motion to compel; granting to certain extent deft-intervenors' motion to compel. (N) ROBINSON, J.
Apr 26		TRANSCRIPT OF PROCEEDING from 4-21-82; pages 1-104; (Rep: Robert M. Weber); court copy.
Apr 24	83	ORDER continuing trial to 6-28-82; extending period for discovery to 6-11-82; parties may taken de benee esse depositions between 6-11-82 and 6-21-82; trial brief to be submitted by 6-24-82; counsel to file list of exhibits by 6-24-82; stipulations of evidence to be filed by 6-25-82; counsel to file list of witnesses by 6-24-82 and counsel to file list of depositions to be introduced into evidence by 6-24-82. (N) ROBINSON, J.
Apr 30	84	MEMORANDUM of defts in opposition to pltf's motion for expedited determination of pending motion for partial summary judgment and for stay of the discovery order of 4-22-82.

SEE NEXT PAGE

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

FPI-HAP—7-14-80-20M-4308

PLAINTIFF	DEFENDANT	DOCKET NO. 82-665
BUSBEE, et al	SMITH, et al	PAGE 7 OF ___ PAGES

DATE 1982	NR.	PROCEEDINGS
May 3	85	MEMORANDUM of deft-intervenors in opposition to pltfs' motion for expedited determination of pending motion for partial summary judgment.
May 7	86	APPLICATION of U.S. Deft for order to show cause; memo in support; attachment A.
May 14	87	MEMORANDUM of pltfs in opposition to defts' application for order to show cause; exhibits A, B, and C.
May 14	88	MOTION of Deft-intervenors for injunction and interim reapportionment plan; exhibits A, B, and C; memo in support.
May 14	89	MOTION of deft-intervenors for denial of declaratory judgment relief because of pltfs' misconduct and unclean hands; memo in support.
May 17	90	RESPONSE of deft-intervenors to defts' application for order to show cause.
May 18	91	ORDER filed 5-14-82, that pltfs. appear on 5-21-82 at 2PM and show cause why they should not be enjoined from proceeding with implementation of certain act. (N) ROBINSON, J.
May 18	92	MEMORANDUM of pltfs in opposition to deft-intervenors' motion for injunction and interim reapportionment plan; third affidavit of Linda D. Meggers; exhibits A thru H.
May 18	93	MEMORANDUM of pltfs in opposition to deft-intervenors' motion for denial of declaratory judgment relief "Because of pltfs' Misconduct and Unclean Hands"; exhibit A.
May 20	94	SECOND MOTION of deft U.S. for order compelling discovery and to renew first motion for order compelling discovery; memo in support; attachment.
May 21		MOTION of deft to show cause and motion of deft for order to compel discovery, heard and taken under advisement. (Rep: Roberts Weber) ROBINSON, J.
May 21	95	AFFIDAVIT of Susan Nalls; exhibit A submitted by deft intervenors.
May 21	96	DECLARATION of Carl W. Gabel; attachment, submitted by defts.
May 24	97	MEMORANDUM OPINION AND ORDER enjoining pltfs from certain action; denying intervenor-defts motion for interim relief; granting 2nd and renewed 1st motion for an order compelling discovery. (N) ROBINSON, J.
May 24	98	APPLICATION of pltfs for stay.

SEE NEXT PAGE

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

FPI—MAR—7-14-80-70M-4398

PLAINTIFF	DEFENDANT	DOCKET NO. 82-665
BUSBEE, et al	SMITH, et al	PAGE 8 OF ___ PAGES

DATE 1982	NR.	PROCEEDINGS
May 24	99	NOTICE of appeal of pltfs to the supreme Court of the United States.
May 25	100	ORDER denying application of pltf for a stay. (N) ROBINSON, J.
May 25		TRANSCRIPT OF PROCEEDINGS from 5-21-82; pages 1-102; (Rep: Robert M. Weber); court copy.
May 25		DEPOSITION of Hallue Elizabeth Wright taken 4-30-82 on behalf of pltfs.
Jun 2	101	SUPPLEMENTAL RESPONSES of pltfs to certain of defts interrogatories.
Jun 7	102	SUPPLEMENTAL RESPONSES of deft-intervenor Julian Bond to pltfs' third interrogatories.
Jun 14		DEPOSITION of Representative Al Scott taken 6-3-82 on behalf of pltfs; correction sheet.
Jun 14		DEPOSITION of Susan Nalls taken 5-28-82 on behalf of pltfs; correction sheet; exhibit 1.
Jun 14		DEPOSITION of William (Billy) Randall taken 6-7-82 on behalf of pltfs; unexecuted.
Jun 17	103	MOTION of pltf in limine; statement of P&A's; exhibits A, B, and C.
Jun 18	104	APPLICATION of pltfs for order to issue subpoena.
Jun 21	105	JOINT MOTION for authorization toserve subpoenas in Georgia.
Jun 21	106	ORDER allowing subpoenas for trial wtinesses to be served in the state of Georgia. (N) ROBINSON, J.
Jun 23		TRANSCRIPT of Video Taped Newscasts from 8-31-81 to 9-17-81 before E. DUane Smith, Certified Court Reporter at WSB-TV, Atlanta, Georgia taken on 6-17-82.
Jun 23		DEPOSITION of Jack Sells taken 6-17-82 pursuant to Court Order ; exhibits 1 and 2.
Jun 24	107	TRIAL BRIEF of deft-intervenors.
Jun 24	108	DESIGNATION of deft-intervenors of depositions.
Jun 24	109	RESPONSE of deft-intervenors to pltfs' motion in limine.

SEE NEXT PAGE

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR—7-14-80-70M-4398

PLAINTIFF	DEFENDANT	DOCKET NO. 82-665
BUSBEE, et al	SMITH, et al	PAGE 9 OF ___ PAGES

DATE 1982	NR.	PROCEEDINGS
Jun 24	110	MASTER LIST of deft-intervenors of exhibits.
Jun 24	111	LIST OF WITNESSES of deft-intervenors.
Jun 24	112	SUBMISSION of the U.S. setting forth trial witnesses, depositions to be introduced into evidence, and the master list of exhibits; exhibits 1 thru 18.
Jun 24	113	TRIAL BRIEF of the U.S.A.; table of contents; table of authorities.
Jun 24	114	LIST of pltfs of depositions to be introduced into evidence.
Jun 24	115	LIST of pltfs of exhibits; attachment.
Jun 24	116	WITNESS LIST of pltfs.
Jun 24	117	PRETRIAL BRIEF of pltfs.
Jun 25	118	DEPOSITION of Terrell Starr taken 5-27-82 on behalf of defts; errata sheet; exhibit 1.
Jun 25	119	STIPULATION of facts.
Jun 25	120	THIRD SUPPLEMENTAL RESPONSE of deft-intervenors to pltfs' third interrogatories.
Jun 25	121	FOURTH SUPPLEMENTAL RESPONSE of deft-intervenors to pltfs' third interrogatories.
Jun 25	121	REQUEST (first) of deft-intervenors for judicial notice; exhibits A1 thru A72; excluding A66 and A67.
Jun 25	122	REQUEST of the U.S. for judicial notice ot adjudicative facts.
Jun 25	123	AMENDED SUBMISSION of the U.S. setting forth trial witnesses.
Jun 28		DEPOSITION of Dr. Alex Willingham taken 6-18-82 on behalf of pltfs.
Jun 28		DEPOSITION of Representative Roger Williams taken 6-7-82 on behalf of federal defts; errata sheet.
Jun 28		DEPOSITION of Dan Ebersole taken 6-1-82 on behalf of defts; errata sheet.
Jun 28		DEPOSITION of Senator Perry Hudson taken 5-24-82 on behalf of government; errata sheet.

SEE NEXT PAGE

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

FPI—MAR—7-14-80-70M-4398

PLAINTIFF	DEFENDANT	DOCKET NO. 82-665
BUSBEE, et al	SMITH, et al	PAGE 10 OF ____ PAGES

DATE 1982	NR.	PROCEEDINGS
Jun 28		DEPOSITION of Vinson Wall taken 5-31-82 on behalf of deft-intervenor; correction sheet. (Volume I)
Jun 28		DEPOSITION of Vinson Wall taken 5-31-82 on behalf of deft-intervenor; (Volume II).
Jun 28		DEPOSITION of Joe Mack Wilson taken 5-31-82 on behalf of Government; correction sheet. (Volume I).
Jun 28		DEPOSITION of Joe Mack Wilson taken 5-14-82 on behalf of Government; correction sheet. (Volume II).
Jun 28		DEPOSITION of Joe Mack Wilson taken 5-19-82 on behalf of Government; correction sheet. (Volume III)
Jun 29		DEPOSITION of Linda Meggers taken 5-28-82 on behalf of defts; correction sheet. (Volume VII)
Jun 29		DEPOSITION of LInda Meggers taken 6-9-82 on behalf of defts; correction sheet. (Volume VIII)
Jun 29		DEPOSITION of Governor George D. Busbee taken 6-21-82 on behalf of deft-intervenors; errata sheet; exhibits 1 thru 15.
Jun 29		DEPOSITION of Thomas B. Murphy taken 5-11-82 on behalf of defts; unexecuted.
Jun 28		TRIAL BY COURT begun and respited to 6-29-82 at 9:00 .am. (Rep: Joe Rogers) EDWARDS, J USCA ROBINSON, J . GREEN, JUNE, J.
Jun 30		TRIAL resumed and respited to 7-1-82 at 9:00 a.m. (Rep: Craig Knowles) EDWARDS, J. USCA ROBINSON, J. GREEN, JUNE, J.
Jul 1		DEPOSITION of Representative John GOdbee taken 5-26-82 on behalf of defts; errata sheet.
Jul 1		DEPOSITION of Louis Summers taken 6-1-82 on behalf of deft-intervenor errata sheet.
Jul 1		DEPOSITION of Representative Bettye Lowe taken 5-25-82 on behalf of defts-intervenor and defts; exhibit 1; errata sheet.
Jul 1		DEPOSITION of Senator Floyd W. Hudgins taken 6-8-82 on behalf of defts-intervenors; unexecuted.
Jul		DEPOSITION of Patricia Nally taken 6-8-82 on behalf of federal defts unexecuted.

SEE NEXT PAGE

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

FPI—MAR—7-14-80-70M-4388

PLAINTIFF	DEFENDANT	DOCKET NO. 82-665
BUSBEE, et al	SMITH, et al	PAGE 11 OF ____ PAGES

DATE 1982	NR.	PROCEEDINGS
Jul 1		DEPOSITION of Hosea Williams taken 6-14-82; unexecuted.
Jul 1		DEPOSITION of Robert Ford taken 6-16-82 on behalf of pltfs; exhibits 1,2, and 3; unexecuted.
Jul 1		DEPOSITION of Grace T. Hamilton taken 6-3-82 on behalf of federal defts; exhibits 1,2, and 3; errata sheet.
Jul 1		DEPOSITION of Representative Hank ELliott taken 6-4-82 on behalf of defts and deft intervenors; unexecuted.
Jul 1		DEPOSITION of Representative Hank Elliott taken 6-11-82 on behalf of defts and deft intervenors; unexecuted. (Volume II).
Jul 1		DEPOSITION of Senator Culver Kidd taken 6-1-82 on behalf of federal defts; exhibit 1; unexecuted.
Jul 1		DEPOSITION of Senator Thomas F. Allgood taken 6-8-82 on behalf of federal defts; unexecuted.
Jul 1		DEPOSITION of Representative Robert A. Holmes taken 6-4-82 on behalf of defts and deft intervenors.
Jul 1		DEPOSITION of James Brewer taken 6-17-82; unexecuted.
Jul 1		DEPOSITION of Julian Bond taken 6-4-82 on behalf of pltfs.
Jul 1		DEPOSITION of Glen Vey taken 6-8-82 on behalf of federal government; errata sheet; exhibit 1.
Jul 1		DEPOSITION (continued) of Representative John Godbee taken 6-4-82.
Jul 1		DEPOSITION of Linda D. Meggers taken 5-3-82 on behalf of defts exhibits 10 thru 19; errata sheet; unexecuted.
Jul 1		DEPOSITION (Continued) of Linda D. Meggers taken 5-4-82 on behalf of defts; errata sheet; unexecuted. (Volume II)
Jul 1		DEPOSITION (continued) of Linda D. Meggers taken 5-5-82 on behalf of defts; errata sheet; unexecuted.
Jul 1		DEPOSITION (continued) of LInda D. Meggers taken 5-6-82 on behalf of defts; errata sheet; unexecuted. (Volume IV)
Jul 1		DEPOSITION (continued) of LInda D. Meggers taken 5-7-82 on behalf of defts; errata sheet; unexecuted. (Volume V)
Jul 1		DEPOSITION (continued) of Linda D. Meggers taken 5-10-82 on behalf of defts; errata sheet. (Volume VI)

SEE NEXT PAGE

DC 111A
(Rev. 3/75)

CIVIL DOCKET CONTINUATION SHEET

FM-MAR--7,14,60,70M,4308

PLAINTIFF	DEFENDANT	DOCKET NO. 82-665
BUSBEE, et al	SMITH, et al	PAGE 12 OF ___ PAGES

DATE 1982	NR.	PROCEEDINGS
Jul 1		DEPOSITION of Lieutenant Governor Zell Miller taken 5-18-82 on behalf of Government; errata sheet.
Jul 1		DEPOSITION (continued) of Grace T. Hamilton taken 6-10-82.
Jul 1		TRIAL resumed and concluded; parties to submit memoranda with respect to designation by 7-2-82; proposed findings to be submitted by 7-12-82. (Rep: Joyce Northwood) EDWARDS, J. USCA ROBINSON, J. GREEN, J.
Jul 2	123	AMENDED DESIGNATION of deft intervenors of depositions to be relied upon at trial.
Jul 2	124	SUPPLEMENTAL DESIGNATION of pltfs of depositions.
Jul 8		TRANSCRIPT OF PROCEEDINGS from 6-28-82; pages 1-161; (Rep: JOseph D. ROgers, court copy. (1st day)
Jul 8		TRANSCRIPT OF PROCEEDINGS from 6-92-82; pages 162-398; (REp: Cathy Jardim); court copy. (2nd day)
Jul 8		TRANSCRIPT OF PROCEEDINGS from 6-30-82; pages 399-651; (Rep: Craig L. Knowles); court copy. (3rd day)
Jul 8		TRANSCRIPT OF PROCEEDINGS from 7-1-82; pages 652-727; (Rep: JOyce Northwood); court copy. (4th day)
Jul 12	125	EXHIBITS 66,67 and 74 of deft intervenor to first request for judicial notice filed 6-25-82.
Jul 12	126	PROPOSED FINDINGS of pltfs of fact and conclusions of law; table of contents.
Jul 12	127	PROPOSED FINDINGS of U.S. of fact and conclusions of law.
Jul 12	128	MOTION of deft U.S. to designate and introduce certain additional portions of depositions into evidence; attachment.
Jul 12	129	PROPOSED FINDINGS of intervenors of fact and conclusions of law. (filed per chambers).
Jul 14		DEPOSITION of Representative Ken Workman taken 6-16-82 on behalf of Federal government; errata sheet.
July 23	130	FINDINGS OF FACT AND CONCLUSIONS OF LAW. (N) EDWARDS, J. GREEN, J. ROBINSON, J.

SEE NEXT PAGE

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR—7-14-80-70M-4398

PLAINTIFF	DEFENDANT	DOCKET NO. 82-0665
BUSBEE, et al.	SMITH, et al.	PAGE 13 OF ___ PAGES

DATE	NR.	PROCEEDINGS
1982 July 22	131	ORDER filed 7-22-82, declaring that Act No. 5 of the 1981 Extra-ordinatry Session of the Georgia General Assembly was enacted with the purpose of denying or abridging the right to vote on request for a declaratory judgment; enjoining pltfs. from implementing Act. No. 5; and directing pltfs. to submit by 8-11-82 a reapportionment of the Fourth and Fifth Congressional Districts. (N) EDWARDS, J., GREEN, J., & ROBINSON, J.
Jul 26	132	APPLICATION of pltfs for stay.
Jul 26	133	NOTICE OF APPEAL of pltfs to the Supreme Court of the U.S.; $5.00 fee paid and credited to U.S. Treasury.
Jul 27		DEPOSITION of Senator Paul Coverdell taken 6-2-82 on behalf of defts errata sheet.
Jul 26	134	ORDER denying pltfs' application for stay of this court's order of 7-22-82. (N) GREEN, J.
Jul 29	135	MOTION of U.S. for clarification of the Court's order of 7-22-82; memo in support.
Jul 30	136	STATEMENT OF P&A'S of pltfs in oppositon to defts' motion for clarification of the court's order of 7-22-82.
Aug 2	137	ORDER filed 7-30-82 that on or before Monday, 8-2-82 at 4:00 p.m. pltfs and intervenor-defts shall file a response to the motion of the U.S. for clarification of the Court's order of 7-22-82. (N) ROBINSON, J.
Aug 2	138	RESPONSE of intervenors to motion of the US for clarification.
Aug 3	139	ORDER filed 8-2-82 denying federal defts motion for clarification of order of 7-22-82. (N) ROBINSON, J. for the Court.
Aug 9	140	SUPPLEMENTAL REAPPORTIONMENT PLAN of pltfs; exhibits A thru D.
Aug 11	141	CORRECTION of pltfs in statistical data for supplemental reapportion ment plan filed 8-9-82; exhibits 1 and 2.
Aug 13	142	ORDER directing deft and deft-intervenor to file a response to supplemental reapportionment plan by 8-16-82 at 2:00 p.m. (N) EDWARDS, J. (USCA)
Aug 13	143	RESPONSE of the U.S. to pltfs' supplemental reapportion ment plan; exhibit A.
Aug 13	144	MOTION of pltfs for an expedited order to proceed with an expedited election schedule for Congressional Districts 1-3 and 6-10.

SEE NEXT PAGE

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR—7-14-80-70M-4398

PLAINTIFF	DEFENDANT	DOCKET NO. 82-0665
BUSBEE, et al	SMITH, et al	PAGE 14 OF ___ PAGES

DATE 1982	NR.	PROCEEDINGS
Aug 16	145	RESPONSE of intervenors to supplemental reapportionment plan.
Aug 16	146	MOTION of pltfs for an order approving special primary and general election schedules for Georgia's Fourth and Fifth Congressional Districts; exhibit 1.
Aug 16	147	ORDER filed 8-13-82 granting pltfs' motion for an expedited order to proceed with an expedited election schedule for Congressional Districts 1-3 and 6-10. (N) ROBINSON, J.
Aug 19	148	MOTION of deft-intervenors for an order approving special primary and general election schedules for Georgia's fourth and fifth Congressional Districts; P&A's in support of their motion and in opposition to pltfs' motion for an order approving special primary and general election schedules; exhibits I-1 and I-2.
Aug 19	149	SUPPLEMENTAL MEMORANDUM of pltfs regarding proposed election schedules; exhibits 1 thru 5.
Aug 19	150	RESPONSE of the U.S. to pltfs' motion for an order approving special primary and general election schedules for Georgia's fourth and fifth congressional districts.
Aug 24	151	REPLY MEMORANDUM of intervenors regarding proposed election schedule.
Aug 24		MOTION of pltf and deft-intervenors for an order approving special primary and general election schedules for Georgia's fourth and fifth congressional districts heard and court to set forth schedule. (REp: R. Weber) (USCA) EDWARDS, J. ROBINSON, J. GREEN, J.
Aug 24	152	ORDER directing that the Special primary, Runoff, and General Elections for Georgia's Fourth and Fifth Congressional Districts shall proceed according to the attached schedule; that the dates and events numbered 4, 6, 7, 9, 10, 11, 12, 13, 17, 18, 19, 20, 21 and 22 may be altered by pltfs and the dates and events numbered 1,2,3,5,8,14,15,16 and 23 may not be altered except on order of this Court; attachment. (N) (USCA) EDWARDS, J. ROBINSON, J. GREEN, J.
Aug 24	153	ORDER that pltfs are entitled to and granted a declaratory judgment that Act No. 5 as supplemented by House Bill 1 Ex does not have the purpose and will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. (N) (USCA) EDWARDS, J. ROBINSON, J. GREEN, J.

SEE NEXT PAGE

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR—7-14-80-70M-4398

PLAINTIFF	DEFENDANT	DOCKET NO. 82-0665
BUSBEE, et al	SMITH, et al	PAGE 15 OF ___ PAGES

DATE 1982	NR.	PROCEEDINGS
Aug 26		TRANSCRIPT OF PROCEEDINGS from 8-24-82; pages 1-49; (Rep: Robert Weber); court copy.
Sep 23	154	MEMORANDUM OPINION filed 9-21-82 regarding congressional elections in certain districts. (N) EDWARDS.J. (USCA) ROBINSON, J. GREEN, J.
Dec 6	155	CHANGE OF ADDRESS of Thomas I. Atkins, General Counsel; N.A.A.C.P. Special Contribution Fund; 186 Remsen Street; Brooklyn Heights, New York 11201 (212) 858-0800.
Feb 17	156	NOTICE by Intervenor-defts. to take depositions of Mr. Michael Bowers, Ms. Carol Cosgrove, and Mr. Mark Cohen.
Feb 17	157	REQUEST by Intervenor-defts. to pltfs. for production of documents.
Feb 28	158	CERTIFIED COPY OF JUDGMENT from the Clerk Supreme Court of the U.S. affirming judgment USDC.
Mar 8	159	BILL OF COSTS as verified by counsel for the United States; Brief in support; exhibits A thru G.
Mar 21	160	OBJECTIONS by pltfs. to United States Bill of Costs; exhibit A.
Apr 11	161	CONSENT ORDER concerning attorneys' fees costs and expenses of intervenors. (N) ROBINSON, CJ.
Jun 15	--	BILL OF COSTS as taxed by the Clerk in the amount of $20,458.15; attachment. (N)
June 22	162	MOTION of the United States defts to review taxation of costs; attachment A; memorandum of law in support; Attachments A thru G.
July 5	163	MEMORANDUM OF LAW of pltfs in opposition to United States' motion to review taxation of costs.
Sept 29	164	MEMORANDUM filed 9/28/83. (N) ROBINSON, CJ. (sb)
Sept 29	165	ORDER filed 9/28/83 granting motion of the United States of America to review taxation of costs; directing that pltf State of Georgia shall be taxed $40,929.48 for the costs deft United States of America incurred in defending this action. (N) ROBINSON, CJ. (sb)

EXHIBIT

4

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

GEORGE D. BUSBEE, et al., Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 82-0665
WILLIAM FRENCH SMITH, et al., Defendants.	)	

FILED

APR 22 1982

JAMES F. DAVEY, Clerk

ORDER

Upon consideration of Plaintiffs' Motion for a Protective Order as to Certain Depositions, Defendants' Motion to Compel, Defendant-Intervenors' Motion to Compel, Plaintiffs' Motion for a Pretrial Case Management Order, the responses thereto, the hearing held April 21, 1982, and the entire record herein, it appearing to the Court that: (1) inquiry into considered but rejected alternative Congressional plans is a proper subject for discovery in this case since it may lead to circumstantial evidence on the purpose of the Georgia legislature in adopting the plans at issue, Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266 (1977); Washington v. Davis, 425 U.S. 229, 242-43 (1976); (2) inquiry into the reasons why certain state legislative districts were chosen may similarly lead to circumstantial evidence; and (3) the scope of discovery should be broadly construed where "there is the possibility that the information sought may be relevant to the subject matter of the action", 8 Wright & Miller, Federal Practice and Procedure § 2008, it is by the Court this 22nd day of April, 1982,

82

ORDERED, that Plaintiffs' Motion for a Protective Order be and hereby is DENIED; and it is

FURTHER ORDERED, that Plaintiffs' Motion for a Pretrial Case Management Order be and hereby is DENIED; and it is

FURTHER ORDERED, that Defendants' Motion to Compel be and hereby is HELD IN ABEYANCE pending Plaintiffs' submission of more complete information; and it is

FURTHER ORDERED, that if Defendants are dissatisfied with Plaintiffs' submission, they shall renew their Motion to Compel; and it is

FURTHER ORDERED, that Defendant-Intervenors' Motion to Compel be and hereby is GRANTED only to the extent that Plaintiffs shall comply with the "First Notice of Depositions" and the "First Notice to Produce".

Aubrey E. Robinson, Jr.
United States District Judge

FOR THE COURT

EXHIBIT

5

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NORTHERN DISTRICT OF TEXAS
FILED
JUN - 1 2004
CLERK, U.S. DISTRICT COURT
By _____
Deputy

ALLSTATE INSURANCE CO. and STERLING COLLISION CENTERS, INC.,	§	
Plaintiffs,	§	
v.	§	Civil Action No. 3:03-CV-2187-K
GREG ABBOTT, in his official capacity as Attorney General of Texas, CAROL KEETON STRAYHORN, in her official capacity as Texas Comptroller of Public Accounts,	§	
Defendants,	§	
AUTOMOTIVE SERVICE ASSN. and CONSUMER CHOICE IN AUTOBODY REPAIR,	§	
Intervenors.	§	

ORDER

Before the Court is Plaintiffs' Motion to Compel Discovery from the State, filed March 8, 2004. The motion is **granted**. The State Defendants shall:

1. Supplement their responses to Interrogatory Nos. 1-8, 13 and 15-17; and

2. Produce all documents withheld on the basis of legislative, First Amendment or statutory privilege.

SO ORDERED.

~~May~~ June 1, 2004.

ED KINKEADE
UNITED STATES DISTRICT JUDGE