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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,

Plaintiffs,

v.

RICK PERRY, *et al.*,

Defendants.

Civil Action No. 2:13-cv-193 (NGR)

UNITED STATES OF AMERICA,

Plaintiff,

TEXAS LEAGUE OF YOUNG VOTERS
EDUCATION FUND, *et al.*,

Plaintiff-Intervenors,

TEXAS ASSOCIATION OF HISPANIC
COUNTY JUDGES AND COUNTY
COMMISSIONERS, *et al.*,

Movant-Intervenors,

v.

STATE OF TEXAS, *et al.*,

Defendants,

TRUE THE VOTE,

Movant-Intervenor.

Civil Action No. 2:13-cv-263 (NGR)

TEXAS STATE CONFERENCE OF NAACP
BRANCHES, *et al.*,

Plaintiffs,

v.

JOHN STEEN, *et al.*,

Defendants.

Civil Action No. 2:13-cv-291 (NGR)

UNITED STATES' OPPOSITION TO TRUE THE VOTE'S MOTION TO INTERVENE

The United States respectfully files this response opposing True the Vote's motion to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) or to be granted permissive intervention under Rule 24(b)(1). True the Vote is not entitled to intervention as of right under Rule 24(a)(2) because it has failed to establish that it has a direct, substantial, and legally protectable interest that would be impeded or impaired by this action, and because even if it had such an interest, it has failed to show that the State would not adequately represent that interest. This Court should also exercise its discretion under Rule 24(b)(1) to deny permissive intervention to avoid the irrelevant and collateral issues True the Vote intends to pursue. Any interests True the Vote has in this litigation may be fully addressed through *amicus* participation.

I. Background

The United States filed this action alleging that the State of Texas's photographic voter identification law, Senate Bill 14 (2011) ("SB 14"), violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973c, because it was enacted for the purpose, and has the result, of denying or abridging equal opportunities for Hispanic and African-American voters to participate in the political process. Compl. ¶¶ 67-70, PFR 1-PFR 3 (U.S. ECF No. 1). *See id.* ¶¶ 68-69. As a prophylactic remedy, the United States also requests that this Court retain jurisdiction and

subject Texas to coverage under Section 3 of the Voting Rights Act, 42 U.S.C. § 1973a. *See* Compl. ¶¶ 64-65, PFR 5.

Although the United States commenced this litigation little more than two months ago, administrative and judicial proceedings addressing whether SB 14 complies with the Voting Rights Act have been ongoing since July 25, 2011, culminating in the following findings by a three-judge court of the United States District Court for the District of Columbia: “(1) a substantial subgroup of Texas voters, many of whom are African American or Hispanic, lack photo ID; (2) the burdens associated with obtaining ID will weigh most heavily on the poor; and (3) racial minorities in Texas are disproportionately likely to live in poverty.” *Texas v. Holder*, 888 F. Supp. 2d 113, 138 (D.D.C. 2012) (three-judge court), *vacated*, 133 S. Ct. 2886 (2013). Based on these findings, the Court concluded that SB 14 would violate Section 5 of the Voting Rights Act “because it would in fact have a retrogressive effect on Hispanic and African American voters.” *Ibid*.

Although True the Vote did not participate in the Section 5 declaratory judgment action, it now seeks to intervene in the instant case and asserts a panoply of alleged interests in support of its request. As explained below, not only do none of these professed interests support intervention, they weigh heavily against it.

II. Intervention as of right

A. Legal standard

True the Vote may intervene as of right only if it meets the four prerequisites under Federal Rule of Civil Procedure 24(a)(2):

- (1) the application for intervention must be timely;
- (2) the applicant must have an interest relating to the property or transaction which is the subject of the action;
- (3) the applicant must be so situated that the disposition of the action may, as a

practical matter, impair or impede his ability to protect that interest; (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

Haspel & Davis Milling & Planting Co. v. Bd. of Levee Comm'rs, 493 F.3d 570, 578 (5th Cir. 2007) (quoting *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.* (“*NOPSI*”), 732 F.2d 452, 463 (5th Cir. 1984) (en banc)). The failure to satisfy even one of the four prerequisites precludes intervention as of right under Rule 24(a)(2). *Haspel & Davis Milling & Planting Co.*, 493 F.3d at 578. The party seeking to intervene bears the burden of proving each of these requirements. *Kneeland v. National Collegiate Athletic Assoc.*, 806 F.2d 1285, 1287 (5th Cir. 1987).

B. True the Vote has not established that it may intervene as of right under Rule 24(a)(2)

True the Vote has failed to meet three of the four prerequisites imposed by Rule 24(a)(2), and therefore, is not entitled to intervention as of right. *See United States v. Florida*, No. 4:12-cv-285, Slip Op. at 3-4 (N.D. Fla. Nov. 6, 2012) (ECF No. 49) (Ex. 1) (holding that “True the Vote plainly [was] not entitled to intervene as of right” in the United States’ lawsuit against the State of Florida for violations of the National Voter Registration Act; concluding that True the Vote failed to establish a sufficient interest in the case or to prove inadequacy of representation by Florida).

1. True the Vote fails to assert the legal interest necessary to intervene as of right

True the Vote cannot satisfy either the second or third prerequisite for intervention under Rule 24(a)(2) because it has not shown that it has a “direct, substantial, legally protectable interest” in the action, *NOPSI*, 732 F.2d at 464, that may be impaired or impeded by the lawsuit. Although it claims an organizational interest in the outcome of this litigation, True the Vote fails to identify any specific organizational injury that it might suffer in the event this Court

determines that SB 14 violates federal law.¹ Mot. to Intervene at 7-8. Rather than proving an organizational injury, True the Vote simply makes vague and unsupported allegations that invalidation of SB 14 would frustrate and hamper its mission and drain its resources. It offers no factual support whatsoever for these bald assertions.

In addition, the alleged interests that True the Vote purports to raise on behalf of its funders and volunteers also fail to satisfy the requirements for intervention as of right. A voter's subjective confidence in the integrity of elections is not a sufficient basis for intervention as of right, both because it is a generalized interest that can be asserted by any voter, and because no voter can suffer a concrete and particularized injury resulting from it. *See United States v. Florida*, No. 4:12-cv-285, Slip Op. at 3-4 (N.D. Fla. Nov. 6, 2012) (ECF No. 49) (Ex. 1) (concluding that "confidence in the election process" is an interest shared by every registered voter in the state and that "[g]eneralized interests of this kind plainly do not afford a voter – or an organization with members who are voters – a right to intervene under Rule 24(a)")(emphasis in original); *see also Athens Lumber Co., Inc. v. Federal Election Comm.*, 690 F.2d 1364, 1366 (11th Cir. 1982).

Another generalized grievance that True the Vote asserts is that its funders and volunteers have an interest "in ensuring their votes are not diluted as a result" of unlawful voting that might be prevented by enforcement of SB 14. The possibility that illegal voting might be prevented by enforcement of SB 14 is, at best, speculative, but at any rate, a generalized interest in preventing such activity is insufficient to support intervention as of right. *See United States v. Florida*, *supra*, slip op. at 3 (rejecting identical claims by True the Vote and other movants for intervention); *see also Taylor Commc'ns Grp. v. Sw. Bell Tel. Co.*, 172 F.3d 385, 389 (5th Cir.

¹ True the Vote does not appear to assert that its role as a proponent of SB 14 provides a sufficient interest to support intervention of right, and the Supreme Court's recent decision in *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013), forecloses any such argument.

1999). “Assertions about what might happen do not establish an injury that is concrete and particularized.” *Nat’l Alliance for Mentally Ill, St. Johns Inc. v. Bd. of Cnty. Comm’rs*, 376 F.3d 1292, 1295 (11th Cir. 2004) (internal quotation marks omitted).

In addition, True the Vote appears to assert on behalf of its funders and volunteers an interest in this litigation based on their status as taxpayers. *See* Mot. to Intervene at 11-12. It is a basic and longstanding principle that the expenditure of tax revenues on a disputed practice does not confer an interest on an individual taxpayer to challenge that practice. *See, e.g., Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436, 1442-43 (2011). True the Vote also appears to assert an even broader interest on behalf of its funders and volunteers: the right to litigate on behalf of local government units to which they pay taxes. Counties and municipalities elect governments to prosecute their interests, and unelected taxpayers may not claim to act on behalf of a city or town in which they reside. Therefore, True the Vote’s funders and volunteers may not assert possible interests of the municipalities in which they reside to justify intervention as of right in this case.²

2. Any alleged legally valid interests are adequately represented

The final prerequisite for intervention under Rule 24(a)(2) is to show that the existing parties to the pending suit would not adequately represent the proposed intervenor’s interests.

“[W]hen the party seeking to intervene has the same ultimate objective as a party to the suit, the existing party is presumed to adequately represent the party seeking to intervene unless that party

² Finally, the United States notes that True the Vote cannot assert the interests of its “members,” *see, e.g.,* Mot. to Intervene at 7-8, for the simple fact that it has no members. Article 4 of its Certificate of Formation states, “The corporation will not have members.” Certificate of Formation, Tex. Sec’y of State Filing 801278527 (June 7, 2010) (Ex. 2). A Texas non-profit corporation may not declare funders to be members without meeting specific statutory requirements; True the Vote has failed to do so. *See* Tex. Bus. Orgs. Code §§ 3.009(1)-(2), 22.151(b), 22.153. True the Vote also does not demonstrate the “indicia of membership” that permit an organization without technical members to assert interests on behalf of associated third parties. *See Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 345 (1977). Its funders do not elect its leadership and play no role in the organization’s leadership. Rather, True the Vote’s bylaws state that “the directors shall elect directors.” Bylaws of KSP/True the Vote, art. II, § 2 (July 26, 2010) (Ex. 3).

demonstrates adversity of interest, collusion, or nonfeasance.” *Kneeland*, 806 F.2d at 1288. The ultimate objective is limited to the outcome of the litigation, rather than the resolution of broader principles. See *Haspel & Davis Milling & Planting Co. v. Bd. of Levee Comm’rs*, 493 F.3d 570, 578 (5th Cir. 2007). The proposed intervenor bears the burden of proving inadequacy of representation. Moreover, every circuit to consider the question has held that a proposed intervenor must make an exacting showing of inadequacy when it shares the same objective as a government party. *Stuart v. Huff*, 706 F.3d 345, 351-52 (4th Cir. 2013); *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003); *Daggett v. Comm’n on Governmental Ethics & Election Practices*, 172 F.3d 104, 111 (1st Cir. 1999); *Wade v. Goldschmidt*, 673 F.2d 182, 186 n.7 (7th Cir. 1982).

Even if True the Vote had established direct, substantial, and legally protectable interests, intervention as of right is not warranted because the State of Texas more than adequately represents any such interest. The position of the State of Texas and True the Vote regarding the defense of SB 14 and the need for Section 3 relief are essentially identical. In addition, the record from the Section 5 declaratory judgment action concerning this very same legislation has demonstrated that Texas has vigorously defended SB 14. The State’s recent motion to dismiss the complaints challenging SB 14 filed in this case (ECF No. 52), including the United States’ complaint, demonstrates that the State intends to continue to mount a vigorous defense in the instant action.

Moreover, True the Vote has not demonstrated and cannot demonstrate adversity of interest between itself and the State. True the Vote asserts that Texas made “[n]o objections” to inquiries in discovery regarding True the Vote’s support for SB 14. Mot. to Intervene at 10. To the contrary, Texas vigorously objected to such questioning, and vigorously litigated in defense

of its claims of privilege regarding constituent communications, such as those with True the Vote in the Section 5 trial over SB 14.³ Separate and apart from those facts, True the Vote need not be allowed to participate now to interpose objections to discovery requests that have not been served, but which it believes might be served in the future in this litigation.⁴ Similarly, True the Vote suggests that Texas is “unlikely” to admit the presence of ineligible individuals on its voter rolls. Mot. to Intervene at 11. However, Texas did, in fact, make precisely such concessions regarding the presence of ineligible persons on its voter list during the Section 5 trial over SB 14.⁵

In addition, True the Vote argues that Texas cannot adequately represent the interests of local governments in avoiding the imposition of bail-in relief under Section 3. Mot. to Intervene at 11. Beyond the fact that True the Vote cannot represent the interests of local governments, *supra* at 5, there is every reason to believe that Texas will vigorously challenge the imposition of Section 3 relief at the remedy stage irrespective of the requested scope. Texas forcefully challenged the constitutionality of the preclearance requirement in the earlier Section 5 case over SB 14, participated as amicus in the *Shelby County* case challenging the constitutionality of

³ See, e.g., Deposition of Colby Beuck at 246:9-18 (May 14, 2012) (Ex. 4); Deposition of Patricia Harless at 186:19-187:4 (May 15, 2012) (Ex. 5). See Order, *Texas v. Holder*, No. 1:12-cv-128 (D.D.C. May 17, 2012) (three-judge court) (ECF No. 122) (Ex. 6). We note that no officer or director of True the Vote was deposed in the Section 5 litigation over SB 14.

⁴ If any party seeks third-party discovery concerning communications by True the Vote’s donors or volunteers, those individuals may seek to quash the relevant subpoenas. See, e.g., Fed. R. Civ. P. 45(d)(3); *Phillips v. Automated Tel. Mgmt. Sys., Inc.*, 160 F.R.D. 561, 562 (N.D. Tex. 1994). If the parties seek discovery from the State that concerns communications with True the Vote, it may seek to intervene at that time and for the limited purpose of opposing such discovery. See *In re Beef Indus. Antitrust Litig.*, 589 F.2d 786, 789 (5th Cir. 1979).

⁵ One of the State’s two experts submitted a report that claimed that there are at least 57,718 deceased persons in the Texas voter registration database and acknowledged that the database contained at least 6,950 duplicate records. See Supplemental Expert Declaration of Thomas Sager at 2, *Texas v. Holder*, No. 1:12-cv-128 (D.D.C. June 11, 2012) (Ex. 7). See also, e.g., Trial Tr. at 39:3-10 (July 13, 2012) (Ex. 8) (conceding the presence of “over 50,000 dead people” in Texas’s voter registration database).

Section 5, and is presently vigorously resisting the imposition of a preclearance remedy under Section 3 of the Voting Rights Act in another court in Texas.⁶

Finally, True the Vote has not alleged, and certainly cannot demonstrate any collusion between the United States and the State in this matter. The parties' vigorous advocacy, both in the Section 5 declaratory judgment action as well as in this case, makes clear that any suggestion of collusion would be unfounded.

III. Permissive intervention

A. Legal standard

The Court may grant permissive intervention on a timely motion to a party with a "claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Permissive intervention "is wholly discretionary with the [district] court . . . even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied." *NOPSI*, 732 F.2d at 470-71 (quoting 7C Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1913) (alteration in original)). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). It is also proper to consider "whether the intervenors' interests are adequately represented by other parties and whether they will significantly contribute to full development of the underlying factual issues in the suit." *NOPSI*, 732 F.2d at 472 (internal quotation marks and citations omitted).

⁶ See ECF 347 in *Texas v. Holder* (D.D.C.) (summary judgment motion by Texas challenging the constitutionality of the preclearance requirement of Section 5 of the Voting Rights act) (available at http://moritzlaw.osu.edu/electionlaw/litigation/documents/PlaintiffsMotionforSummaryJudgment_001.pdf); Amicus Brief of Texas in *Shelby County v. Holder* (S.Ct.) (amicus brief by Texas challenging the constitutionality of Section 5) (available at http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-96_pet_amcu_texas.pdf) and ECF 842 in *Perez v. Perry* (W.D. Tex.) (brief by Texas opposing the imposition of preclearance relief under Section 3 of the Voting Rights Act in Texas) (available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/PerezDfdntsResp2PlntffsUSSec3.pdf>).

B. True the Vote has not established that permissive intervention is appropriate

True the Vote's participation will prevent the efficient resolution of this case. For this reason, the Court should exercise its discretion to deny its motion for permissive intervention.

As set forth in True the Vote's motion to intervene, it seeks to participate to interpose objections to discovery requests that have not been served, but which it believes might be served (Mot. to Intervene at 9-10), to present information that it concedes has already been presented to both the United States and to the State of Texas, *id.* at 4 n.3, 5, 10 n.4, and to assert, among other non-germane allegations, that the United States has a "history of court sanctions and abusive conduct in the preclearance process," which is irrelevant to the Section 2 liability claims at issue.⁷ *Id.* at 2-3. True the Vote's avowed intentions with respect to this litigation will needlessly expand the scope of discovery and related disputes and will delay timely resolution of this action. Moreover, as demonstrated during the Section 5 declaratory judgment action over SB 14, there is no evidence that the State of Texas will not vigorously present defenses to the Voting Rights Act claims at issue before this Court.

What True the Vote seeks would be a burdensome distraction from the merits of this case. Its participation would not contribute to development of a full and complete factual record necessary to support this Court's decision. To the contrary, it would divert the Court's attention to issues concerning True the Vote's numerous allegations of purported voter registration irregularities. Thus, True the Vote stands in stark contrast to the existing intervenors in this litigation, who provide a distinct local perspective and may also have access to relevant information not already in the possession of both plaintiff and defendants.

⁷ Although these allegations are legally irrelevant and therefore outside the scope of this motion, the United States' response should in no way be interpreted as conceding True the Vote's characterizations.

IV. The Court need not exclude True the Vote from all participation

Although the United States believes that True the Vote has not established the prerequisites to warrant intervention as of right and that permissive intervention is not appropriate, the Court, in its discretion, may allow interested parties or organizations to file briefs as *amicus curiae* at an appropriate point in the proceedings. Conversely, if the Court does grant intervention, the United States respectfully requests that it impose express conditions on True the Vote's participation in order to prevent it from delaying adjudication or unnecessarily burdening the existing parties. District courts may impose nearly any condition on a party permitted to intervene. *See* Fed. R. Civ. P. 24 Advisory Committee Note (1966) ("An intervention of right under the amended rule may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceedings."); *Beauregard, Inc. v. Sword Services LLC*, 107 F.3d 351, 353 & n.2 (5th Cir. 1997) ("reasonable conditions may be imposed even upon one who intervenes as of right" and "virtually any condition may be attached to a grant of permissive intervention"). It is within this Court's discretion to foreclose litigation of irrelevant issues, and the United States respectfully requests that, if this Court were to grant intervention, it bar True the Vote from litigating irrelevant or extraneous issues as a condition of that intervention.

V. Conclusion

For the reasons set out above, this Court should deny True the Vote's motion to intervene. The United States does not object to it being permitted to participate as *amicus* in this case. Pursuant to Local Rule 7.4, a proposed order denying the motion is attached hereto.

Date: October 30, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2013, I served a true and correct copy of the foregoing via the Court's ECF system on the following counsel of record:

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Exhibit 1

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO. 4:12cv285-RH/CAS

STATE OF FLORIDA and KEN DETZNER,
Secretary of State, in his official capacity,

Defendants.

ORDER DENYING LEAVE TO INTERVENE

This case arises under the National Voter Registration Act. In the run up to the 2012 primary and general elections, the State of Florida embarked on a program to remove noncitizens from the voter-registration rolls. The United States asserted that the NVRA prohibited such a program within 90 days before a federal primary or general election. On June 12, 2012, the United States filed this action against the State of Florida and its Secretary of State (collectively “the State”) and moved for a temporary restraining order or preliminary injunction requiring the State to discontinue the program until after the 2012 general election.

At an oral argument on the motion on June 27, 2012, the State said that it had voluntarily abandoned the program. In a ruling announced on the record of the oral argument and confirmed in a written order on June 28, 2012, the motion for a temporary restraining order or preliminary injunction was denied, based on this circuit's voluntary-cessation doctrine as applied to public defendants.

At the parties' request, by an order entered on October 10, 2012, further proceedings were stayed until after the election. But the order explicitly did not stay proceedings on two motions to intervene as defendants. The motions were filed before the June 27 oral argument. This order now denies the motions.

I

Four individuals have moved for permissive intervention under Federal Rule of Civil Procedure 24(b). Two organizations—Judicial Watch, Inc., and True the Vote—have moved to intervene either as of right under Rule 24(a) or permissively under Rule 24(b). The four individuals were allowed to present oral argument as *amici* at the June 27 hearing—not to intervene—when the State agreed to yield some of its time.

The State has consented to the motions to intervene. The United States did not object to the individuals' participation in the oral argument as *amici* and does not object to their further participation—or the other proposed intervenors'

participation—as *amici* in further proceedings. But the United States objects to intervention.

II

None of the proposed intervenors has a *direct* interest in the State’s voter-registration activities. The four individuals say that if people are improperly registered to vote, it will dilute the votes of properly registered voters, including the four individuals. The assertion of course is true; an improper vote dilutes a proper one. Judicial Watch makes a similar assertion on behalf of its members who are Florida registered voters and says their confidence in the election process will suffer if accurate voting rolls are not maintained.

These asserted interests are the same for the proposed intervenors—and for Judicial Watch’s members—as for every other registered voter in the state. Generalized interests of this kind plainly do not afford a voter—or an organization with members who are voters—a *right* to intervene under Rule 24(a). And when, as here, the interest in avoiding vote dilution of this kind is adequately represented by existing defendants with a much more direct and substantial stake in the dispute, the better course is to deny permissive intervention as well. The State of Florida has recently—repeatedly—shown its willingness to litigate vigorously against the United States, including in this case and on other matters of this kind.

The State can be relied upon to adequately represent the same interests the intervenors propose to advocate.

True the Vote asserts an additional interest. It says one of its primary missions is to ensure that states and counties properly maintain voter-registration lists as required under federal law. To that end, True the Vote monitors the list-maintenance activities of states and counties, including in Florida. True the Vote sent a letter to the State of Florida in February 2012—long before this lawsuit was filed—inquiring about the State’s list-maintenance activities.

This interest differentiates True the Vote from voters generally. But neither the United States nor the State proposes to interfere in any way with True the Vote’s monitoring activities. And to the extent True the Vote may assert that the State is or may be doing too *little* to monitor its voting lists, that is a different issue altogether; it is not an issue that has been raised by the parties in this case. True the Vote’s interest in the maintenance of accurate voting lists—to the extent those interests are implicated by this litigation at all—will be adequately represented by the State.

True the Vote plainly is not entitled to intervene as of right. I conclude, as a matter of discretion, that True the Vote also should not be granted permissive intervention. True the Vote may indeed bring a useful perspective, and perhaps a

level of legal expertise, to the litigation. But to the extent that is so, the perspective and expertise can be provided through *amicus* participation.

This is not a case like *Johnson v. Mortham*, 915 F. Supp. 1529, 1538-39 (N.D. Fla. 1995), in which the proposed intervenor, the NAACP, not only had a unique perspective but also participated in the event that led to the litigation—the creation of the challenged voting district. True the Vote has not alleged that it was involved in the State’s creation of its voter-list-monitoring program.

The motions to intervene thus will be denied. A long line of decisions supports the ruling. Citing or discussing them all would serve no purpose. Relevant decisions include *Federal Savings & Loan Insurance Corp. v. Falls Chase Special Taxing District*, 983 F.2d 211, 215 (11th Cir. 1993) (“This court will presume that a proposed intervenor’s interest is adequately represented when an existing party pursues the same ultimate objective as the party seeking intervention.” (citations omitted)); *Worlds v. Department of Health & Rehabilitative Services*, 929 F.2d 591, 595 (11th Cir. 1991) (noting the breadth of a district court’s discretion to grant or deny permissive intervention); and *Chiles v. Thornburgh*, 865 F.2d 1197, 1215 (11th Cir. 1989) (upholding a district court’s denial of permissive intervention by parties whose interests were identical to those of a governmental defendant). *See also Dillard v. Chilton Cnty. Comm’n*, 495 F.3d 1324, 1330 (11th Cir. 2007) (addressing an intervenor’s need for standing).

In reaching this decision, I have not overlooked *Meek v. Metropolitan Dade County, Florida*, 985 F.2d 1471 (11th Cir. 1993), *abrogated on other grounds by Dillard*, 495 F.3d 1324. *Meek* was a challenge to at-large voting for a county commission. The Eleventh Circuit held that the district court should have allowed individuals to intervene for the purpose of appealing a judgment sustaining the challenge. The individuals' own voting rights were at stake; their claim was that the district court's decision would deny the individuals' own rights. The Eleventh Circuit said the county was not an adequate advocate for the at-large system and held that the individuals should have been allowed to intervene to protect their own rights. Here, in contrast, the proposed intervenors' own rights are not directly at stake as in *Meek*, and the State can be relied on to adequately represent their interests. Just because a governmental entity is not *always* an adequate representative of a position does not mean a governmental entity is *never* an adequate representative.

III

The denial of intervention does not mean that these proposed intervenors cannot be fully heard on the issues that this case presents. Any of these proposed intervenors will ordinarily be granted leave to file a legal memorandum as *amicus curiae* on legal issues that arise as the case progresses. A motion for leave may be brief, especially if consented. And a proposed memorandum may be submitted

with the motion for leave. An *amicus* memorandum should be filed by the deadline for the State's memorandum on the same issue, absent good cause for a later filing.

IV

For these reasons,

IT IS ORDERED:

The motions to intervene, ECF Nos. 18 and 28, are DENIED.

SO ORDERED on November 6, 2012.

s/Robert L. Hinkle

United States District Judge

Exhibit 2

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697



Hope Andrade
Secretary of State

Office of the Secretary of State

The undersigned, as Secretary of State of Texas, does hereby certify that the attached is a true and correct copy of each document on file in this office as described below:

KSP/True the Vote
Filing Number: 801278527

Certificate of Formation

June 07, 2010

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on September 16, 2010.



A handwritten signature in black ink, appearing to read "Hope Andrade".


Hope Andrade
Secretary of State

Phone: (512) 463-5555
Prepared by: VCASTILLO

Come visit us on the internet at <http://www.sos.state.tx.us/>
Fax: (512) 463-5709
TID: 10266

Dial: 7-1-1 for Relay Services
Document: 328076970002

Exhibit B, Page 20

Form 202		Filed in the Office of the Secretary of State of Texas Filing #: 801278527 06/07/2010 Document #: 310811380002 Image Generated Electronically for Web Filing
Secretary of State P.O. Box 13697 Austin, TX 78711-3697 FAX: 512/463-5709	Certificate of Formation Nonprofit Corporation	
Filing Fee: \$25		
Article 1 - Corporate Name		
The filing entity formed is a nonprofit corporation. The name of the entity is :		
KSP/True the Vote		
Article 2 - Registered Agent and Registered Office		
<input type="checkbox"/> A. The initial registered agent is an organization (cannot be corporation named above) by the name of:		
OR		
<input checked="" type="checkbox"/> B. The initial registered agent is an individual resident of the state whose name is set forth below:		
Name:		
Catherine Engelbrecht		
C. The business address of the registered agent and the registered office address is:		
Street Address:		
Consent of Registered Agent		
<input type="checkbox"/> A. A copy of the consent of registered agent is attached.		
OR		
<input checked="" type="checkbox"/> B. The consent of the registered agent is maintained by the entity.		
Article 3 - Management		
<input type="checkbox"/> A. Management of the affairs of the corporation is to be vested solely in the members of the corporation.		
OR		
<input checked="" type="checkbox"/> B. Management of the affairs of the corporation is to be vested in its board of directors. The number of directors, which must be a minimum of three, that constitutes the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting or until their successors are elected and qualified are set forth below.		
Director 1: Catherine Engelbrecht	Title: Director	
Address:		
Director 2: Lynn Lasher	Title: Director	
Address:		
Director 3: Bryan Engelbrecht	Title: Director	
Address:		
Article 4 - Organization Structure		
<input type="checkbox"/> A. The corporation will have members.		
or		
<input checked="" type="checkbox"/> B. The corporation will not have members.		
Article 5 - Purpose		
The corporation is organized for the following purpose or purposes:		
The Corporation is organized for charitable purposes, including such purposes as, making distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or		

corresponding section of any future federal tax code and the Texas Tax Code, Section 11.18. The specific and primary purpose of the Corporation is to educate/inform and register voters within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any future federal tax code and the Texas Tax Code, Section 11.18.

Supplemental Provisions / Information

Restrictions and Limitations

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its members, trustees, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose clause hereof. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this document, the Corporation shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under section 1-70(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.

Distribution of Assets Upon Winding Up

Upon the dissolution of the Corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not disposed of shall be disposed of by the Court of commons Pleas of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

[The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing

A. This document becomes effective when the document is filed by the secretary of state.

OR

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Organizer

The name and address of the organizer are set forth below.

Brian G. Herrington

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The

undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Brian G. Herrington, Attorney-in-fact

Signature of organizer

FILING OFFICE COPY

Exhibit 3

**BYLAWS OF
KSP/TRUE THE VOTE**

ARTICLE I - OFFICES

1. REGISTERED OFFICE AND AGENT

The registered office and registered agent of the Corporation shall be as set forth in the Corporation's Certificate of Formation. The registered office or the registered agent may be changed by resolution of the Board of Directors, upon making the appropriate filing with the Secretary of State.

2. PRINCIPAL OFFICE

The principal office of the Corporation shall be at _____, provided that the Board of Directors shall have the power to change the location of the principal office.

3. OTHER OFFICES

The Corporation may also have other offices at such places, within or without the State of Texas, as the Board of Directors may designate, or as the business of the Corporation may require or as may be desirable.

ARTICLE II - DIRECTORS

1. BOARD OF DIRECTORS

To the extent not limited or prohibited by law, the Certificate of Formation or these Bylaws, the powers of the Corporation shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of the Board of Directors of the Corporation. Directors need not be residents of the State of Texas or members of the Corporation unless the Certificate of Formation or these Bylaws so require.

2. NUMBER AND ELECTION OF DIRECTORS

The number of directors shall be three (3) provided that the number may be increased or decreased from time to time by an amendment to these Bylaws or resolution adopted by the Board of Directors, provided that the number of directors may not be decreased to fewer than three (3). No decrease in the number of Directors shall have the effect of shortening the term of any incumbent director.

At the first annual meeting of the Board of Directors and at each annual meeting thereafter, the directors shall elect directors. A director shall hold office until the next annual election of directors and until said director's successor shall have been elected, appointed, or designated and qualified.

3. REMOVAL

A director may be removed from office, with or without cause, by the persons entitled to elect, designate, or appoint the director. If the director was elected to office, removal requires an affirmative vote equal to the vote necessary to elect the director.

4. RESIGNATION

A director may resign by providing written notice of such resignation to the Corporation. The resignation shall be effective upon the date of receipt of the notice of resignation or the date specified in such notice. Acceptance of the resignation shall not be required to make the resignation effective.

5. VACANCIES AND INCREASE IN NUMBER OF DIRECTORS

Any vacancy occurring in the Board of Directors shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors. A director elected to fill a vacancy shall be elected for the unexpired term of the previous director. Any directorship to be filled by reason of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of the Board of Directors called for that purpose.

6. ANNUAL MEETING OF DIRECTORS

The annual meeting of the Board of Directors shall be held no later than the last Monday during the month of July, at which they shall elect officers and transact such other business as shall come before the meeting. The time and place of the annual meeting of the Board of Directors may be changed by resolution of the Board of Directors.

Failure to hold the annual meeting at the designated time shall not work a dissolution of the Corporation. In the event the Board of Directors fails to call the annual meeting at the designated time, any Director may make demand that such meeting be held within a reasonable time, such demand to be made in writing by registered mail directed to any officer of the Corporation. If the annual meeting of the Board of Directors is not called within sixty (60) days following such demand, any Director may compel the holding of such annual meeting by legal action directed against the Board of Directors, and all of the extraordinary writs of common law and of courts of equity shall be available to such Director to compel the holding of such annual meeting.

7. REGULAR MEETING OF DIRECTORS

Regular meetings of the Board of Directors may be held with or without notice at such time and

place as may be from time to time determined by the Board of Directors.

8. SPECIAL MEETINGS OF DIRECTORS

The Secretary shall call a special meeting of the Board of Directors whenever requested to do so by the President or by two (2) or more directors. Such special meeting shall be held at the date and time specified in the notice of meeting.

9. PLACE OF DIRECTORS' MEETINGS

All meetings of the Board of Directors shall be held either at the principal office of the Corporation or at such other place, either within or without the State of Texas, as shall be specified in the notice of meeting or executed waiver of notice.

10. NOTICE OF DIRECTORS' MEETINGS

Notice of any special meeting of the Board of Directors shall be given at least two (2) days previously thereto by written notice delivered personally or sent by mail or telegram to each Director at that Director's address as shown by the records of the Corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, the postage thereon prepaid. If notice is given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transaction at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these Bylaws.

11. QUORUM AND VOTING OF DIRECTORS

A quorum for the transaction of business by the Board of Directors shall be a majority of the number of directors fixed by these Bylaws. Directors present by proxy may not be counted toward a quorum. The act of the majority of the directors present in person or by proxy at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or the Certificate of Formation.

A director may vote in person or by proxy executed in writing by the director. No proxy shall be valid after three months from the date of its execution. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and unless otherwise made irrevocable by law.

12. COMPENSATION

Directors, as such, shall not receive any stated salary for their services, but by resolution of the Board of Directors a fixed sum and expenses of attendance, if any, may be allowed for attendance at any meeting of the Board or Directors. A director shall not be precluded from serving the Corporation in any other capacity and receiving compensation for such services. Member of committees may be allowed similar compensation and reimbursement of expenses for attending committee meetings.

13. ACTION BY DIRECTORS WITHOUT MEETING

Any action required by the Texas Business Organizations Code to be taken at a meeting of the Board of Directors, or any action which may be taken at a meeting of the Board of Directors or any committee, may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all the Board of Directors entitled to vote with respect to the subject matter thereof, or all of the members of the committee, as the case may be. Such consent shall have the same force and effect as a unanimous vote.

If the Corporation's Certificate of Formation so provide, any action required by the Texas Business Organizations Code to be taken at a meeting of the Board of Directors or any action that may be taken at a meeting of the Board of Directors or any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of Board of Directors or committee members as would be necessary to take that action at a meeting at which all of the Board of Directors or members of the committee were present and voted.

Each written consent shall bear the date of signature of each Director or committee member who signs the consent. A written consent signed by less than all of the Board of Directors or committee members is not effective to take the action that is the subject of the consent unless, within sixty (60) days after the date of the earliest dated consent delivered to the Corporation in the manner required by this section, a consent or consents signed by the required number of Board of Directors or committee members is delivered to the Corporation at its registered office, registered agent, principal place of business, transfer agent, registrar, exchange agent, or an officer or agent of the Corporation having custody of the books in which proceedings of meetings of Board of Directors or committees are recorded. Delivery shall be by hand or certified or registered mail, return receipt requested. Delivery to the Corporation's principal place of business shall be addressed to the President or principal executive officer of the Corporation.

Prompt notice of the taking of any action by Board of Directors or a committee without a meeting by less than unanimous written consent shall be given to all Board of Directors or committee members who did not consent in writing to the action.

If any action by Board of Directors or a committee is taken by written consent signed by less than all of the Board of Directors or committee members, any articles or documents filed with

the Secretary of State as a result of the taking of the action shall state, in lieu of any statement required by this Act concerning any vote of the Board of Directors or committee members, that written consent has been given in accordance with the provisions of section 6.202 of the Texas Business Organizations Code and that any written notice required by such section has been given.

A telegram, telex, cablegram, or similar transmission by a Director or member of a committee or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a Director or member of a committee shall be regarded as signed by the Director or member of a committee for purposes of this section.

14. COMMITTEES OF THE BOARD OF DIRECTORS

The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate and appoint one or more committees, each of which shall consist of two or more Directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the Board of Directors in the management of the Corporation, except that no such committee shall have the authority of the Board of Directors in reference to amending, altering or repealing the Bylaws; electing, appointing or removing any member of any such committee or any Director or officer of the Corporation; amending or restating the Certificate of Formation; adopting a plan of merger or adopting a plan of consolidation with another Corporation; authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the Corporation; authorizing the voluntary dissolution of the Corporation or revoking proceedings therefore; adopting a plan for the distribution of the assets of the Corporation; or amending, altering or repealing any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered or repeated by such committee. The designation and appointment of any such committee and the delegation of authority to such committee shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed by law upon the Board of Directors or upon any individual Director.

Other committees not having and exercising the authority of the Board of Directors in the management of the Corporation may be appointed in such manner as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be Directors of the Corporation, and the President of the Corporation shall appoint the members thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interests of the Corporation shall be served by such removal.

Each member of a committee shall continue as such until the next annual meeting of the Board of Directors and until a successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member cease to qualify as a member thereof.

One member of each committee shall be appointed chairman by the person or persons authorized to appoint the members thereof.

Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Each committee may adopt rules for its own government not inconsistent with these Bylaws or with rules adopted by the Board of Directors.

ARTICLE III - OFFICERS

1. NUMBER OF OFFICERS

The officers of a Corporation shall consist of a president and a secretary and may also consist of one or more vice-presidents, a treasurer, and such other officers and assistant officers as may be deemed necessary. New offices may be created and filled at any meeting of the Board of Directors. Any two or more offices may be held by the same person, except the offices of president and secretary. A committee duly designated may perform the functions of any officer and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary.

2. ELECTION OF OFFICERS AND TERM OF OFFICE

All officers shall be elected or appointed annually by the Board of Directors at the regular annual meeting of the Board of Directors for such terms not exceeding three (3) years.

3. REMOVAL OF OFFICERS, VACANCIES

Any officer elected or appointed may be removed by the Board of Directors whenever in their judgment the best interests of the Corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

4. POWERS OF OFFICERS

Each officer shall have, subject to these Bylaws, in addition to the duties and powers specifically

set forth herein, such powers and duties as are commonly incident to that office and such duties and powers as the Board of Directors shall from time to time designate. All officers shall perform their duties subject to the directions and under the supervision of the Board of Directors.

The President may secure the fidelity of any and all officers by bond or otherwise.

All officers and agents of the Corporation, as between themselves and the Corporation, shall have such authority and perform such duties in the management of the Corporation as may be provided in these Bylaws, or as may be determined by resolution of the Board of Directors not inconsistent with these Bylaws.

In the discharge of a duty imposed or power conferred on an officer of a Corporation, the officer may in good faith and with ordinary care rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person, that were prepared or presented by: (1) one or more other officers or employees of the Corporation, including members of the Board of Directors; or (2) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

An officer is not relying in good faith within the meaning of this section if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by this subsection unwarranted.

5. PRESIDENT

The President shall be the chief executive officer of the Corporation and shall preside at all meetings of all directors. Such officer shall see that all orders and resolutions of the board are carried out, subject however, to the right of the directors to delegate specific powers, except such as may be by statute exclusively conferred on the President, to any other officers of the Corporation.

The President or any Vice-President shall execute bonds, mortgages and other instruments requiring a seal, in the name of the Corporation. When authorized by the board, the President or any Vice-President may affix the seal to any instrument requiring the same, and the seal when so affixed shall be attested by the signature of either the Secretary or an Assistant Secretary.

The President shall be ex-officio a member of all standing committees.

The President shall submit a report of the operations of the Corporation for the year to the directors at their meeting next preceding the annual meeting of the Board of Directors.

6. VICE-PRESIDENTS

The Vice-President, or Vice-Presidents in order of their rank as fixed by the Board of Directors,

shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and they shall perform such other duties as the Board of Directors shall prescribe.

7. THE SECRETARY AND ASSISTANT SECRETARIES

The Secretary shall attend all meetings of the Board of Directors and shall record all votes and the minutes of all proceedings and shall perform like duties for the standing committees when required. The Secretary shall give or cause to be given notice of all meetings of the Board of Directors and shall perform such other duties as may be prescribed by the Board of Directors. The Secretary shall keep in safe custody the seal of the Corporation, and when authorized by the Board of Directors, affix the same to any instrument requiring it, and when so affixed, it shall be attested by the Secretary's signature or by the signature of an Assistant Secretary.

The Assistant Secretaries shall in order of their rank as fixed by the Board of Directors, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary, and they shall perform such other duties as the Board of Directors shall prescribe.

In the absence of the Secretary or an Assistant Secretary, the minutes of all meetings of the board shall be recorded by such person as shall be designated by the President or by the Board of Directors.

8. THE TREASURER AND ASSISTANT TREASURERS

The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors.

The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements. The Treasurer shall keep and maintain the Corporation's books of account and shall render to the President and directors an account of all of the Treasurer's transactions and of the financial condition of the Corporation and exhibit the books, records and accounts to the President or directors at any time. The Treasurer shall disburse funds for capital expenditures as authorized by the Board of Directors and in accordance with the orders of the President, and present to the President's attention any requests for disbursing funds if in the judgment of the Treasurer any such request is not properly authorized. The Treasurer shall perform such other duties as may be directed by the Board of Directors or by the President.

If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office and for the restoration to the Corporation, in case of death, resignation, retirement or removal from office, of all books, papers, vouchers, money

and other property of whatever kind in the incumbent's possession or under the incumbent's control belonging to the Corporation.

The Assistant Treasurers in the order of their seniority shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer, and they shall perform such other duties as the Board of Directors shall prescribe.

ARTICLE IV - INDEMNIFICATION AND INSURANCE

1. INDEMNIFICATION

The Corporation shall have the full power to indemnify and advance or reimburse expenses pursuant to the provisions of the Texas Business Organizations Code to any person entitled to indemnification under the provisions of the Texas Business Organizations Code.

2. INSURANCE

The Corporation may purchase and maintain insurance or another arrangement on behalf of any person who is or was a member, director, officer, employee, or agent of the Corporation or who is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, employee benefit plan, other enterprise, or other entity, against any liability asserted against him or her and incurred by him or her in such a capacity or arising out of his or her status as such a person, whether or not the Corporation would have the power to indemnify him or her against that liability. Without limiting the power of the Corporation to procure or maintain any kind of insurance or other arrangement, the Corporation may, for the benefit of persons indemnified by the Corporation, (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Corporation; or (4) establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the Corporation or with any insurer or other person deemed appropriate by the Board of Directors regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or part by the Corporation. In the absence of fraud, the judgment of the Board of Directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement shall be conclusive and the insurance or arrangement shall not be voidable and shall not subject the directors approving the insurance or arrangement to liability, on any ground, regardless of whether directors participating in the approval are beneficiaries of the insurance or arrangement.

ARTICLE V - MISCELLANEOUS

1. WAIVER OF NOTICE

Whenever any notice is required to be given to any member or director of the Corporation under the provisions of the Texas Business Organizations Code, the Certificate of Formation, or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

2. MEETINGS BY TELEPHONE CONFERENCE, ELECTRONIC OR OTHER REMOTE COMMUNICATIONS TECHNOLOGY

Subject to the provisions required or permitted by the Texas Business Organizations Code and these Bylaws for notice of meetings, members of the Board of Directors, or members of any committee may participate in and hold a meeting of such board, or committee by means of: (1) conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other; or (2) another suitable electronic communications system, including videoconferencing technology or the Internet, only if: (a) each member entitled to participate in the meeting consents to the meeting being held by means of that system; and (b) the system provides access to the meeting in a manner or using a method by which each member participating in the meeting can communicate concurrently with each other participant. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

3. SEAL

The Corporation may adopt a corporate seal in such form as the Board of Directors may determine. The Corporation shall not be required to use the corporate seal and the lack of the corporate seal shall not affect an otherwise valid contract or other instrument executed by the Corporation.

4. CONTRACTS

The Board of Directors may authorize any officer or officers, agent or agents of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

5. CHECKS, DRAFTS, ETC.

All checks, drafts or other instruments for payment of money or notes of the Corporation shall be signed by such officer or officers or such other person or persons as shall be determined from time to time by resolution of the Board of Directors.

6. DEPOSITS

All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

7. GIFTS

The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Corporation.

8. BOOKS AND RECORDS

The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the Board of Directors, and committees and shall keep at the registered office or principal office in this State a record of the names and addresses of its members entitled to vote. A Director of the Corporation, on written demand stating the purpose of the demand, has the right to examine and copy, in person or by agent, accountant, or attorney, at any reasonable time, for any proper purpose, the books and records of the Corporation relevant to that purpose, at the expense of the member.

9. FINANCIAL RECORDS AND ANNUAL REPORTS

The Corporation shall maintain current true and accurate financial records with full and correct entries made with respect to all financial transactions of the Corporation, including all income and expenditures, in accordance with generally accepted accounting practices. All records, books, and annual reports (if required by law) of the financial activity of the Corporation shall be kept at the registered office or principal office of the Corporation in this state for at least three years after the closing of each fiscal year and shall be available to the public for inspection and copying there during normal business hours. The Corporation may charge for the reasonable expense of preparing a copy of a record or report.

10. FISCAL YEAR

The fiscal year of the Corporation shall be as determined by the Board of Directors.

ARTICLE VI - CONSTRUCTION

1. PRONOUNS AND HEADINGS

All personal pronouns used in these Bylaws shall include the other gender whether used in masculine or feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate. All headings herein are for convenience only and neither limit nor amplify the provisions of these Bylaws.

2. INVALID PROVISIONS

If any one or more of the provisions of these Bylaws, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of these Bylaws and all other applications of any such provision shall not be affected thereby.

ARTICLE VII - DISSOLUTION/DISCONTINUANCE OF THE CORPORATION

In the event the Board issues a unanimous proclamation that the activities of the Corporation are forever discontinued, all of the Corporation's assets shall be transferred to an organization that is qualified as a charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1954 (as amended), with similar values and beliefs consistent with that of KSP/TRUE THE VOTE, as selected and proclaimed by the Board of Directors.

ARTICLE VIII - AMENDMENT OF BYLAWS

The Board of Directors may amend or repeal these Bylaws, or adopt new Bylaws, unless the Certificate of Formation or the Texas Business Organizations Code limits such powers.

Adopted by the Board of Directors on July 26, 2010.


Secretary

Exhibit 4

Colby Beuck

May 14, 2012

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,)

Plaintiff,)

VS.)

ERIC H. HOLDER, JR. in his)
official capacity as Attorney)
General of the United States,)

Defendant,)

ERIC KENNIE, et al,)

Defendant-Intervenors,)

TEXAS STATE CONFERENCE OF)
NAACP BRANCHES,)

Defendant-Intervenors,)

TEXAS LEAGUE OF YOUNG VOTERS)
EDUCATION FUND, et al,)

Defendant-Intervenors,)

TEXAS LEGISLATIVE BALCK)
CAUCUS, et al,)

Defendant-Intervenors,)

VICTORIA RODRIGUEZ, et al.,)

Defendant-Intervenors.)

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

ORAL DEPOSITION OF

COLBY BEUCK

MAY 14, 2012



ESQUIRE
DEPOSITION SOLUTIONS

Toll Free: 800.211.DEPO
Facsimile: 512.328.8139

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Colby Beuck

May 14, 2012

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1 ORAL DEPOSITION OF COLBY BEUCK, produced as a
2 witness at the instance of the Defendant, was duly
3 sworn, was taken in the above-styled and numbered cause
4 on the MAY 14, 2012, from 9:50 a.m. to 6:08 p.m., before
5 Chris Carpenter, CSR, in and for the State of Texas,
6 reported by machine shorthand, at the offices of The
7 United States Attorney, 816 Congress Avenue, Suite 1000,
8 Austin, Texas 78701, pursuant to the Federal Rules of
9 Civil Procedure and the provisions stated on the record
10 or attached hereto.

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May 14, 2012

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Colby Beuck

May 14, 2012

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Colby Beuck

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1 Harless or you become aware of those concerns from any
2 other sources communicated to the representative or to
3 you?

4 MR. SWEETEN: Objection to the question,
5 it calls for speculation. In addition, I'm going to
6 instruct you as I previously have: Do not reveal
7 communications that you have had with Representative
8 Harless, staff members, state agencies, constituents or
9 TLC. Let me also tell you that if you've got
10 information as to that question based upon the public
11 record, you can go ahead and try to answer her question.

12 THE WITNESS: Okay.

13 MS. WESTFALL: And to be clear,
14 Mr. Sweeten, I'm asking about communications from
15 members of the public, groups, interest groups that were
16 communications to Representative Harless or Mr. Beuck.

17 MR. SWEETEN: Again, as to constituent
18 communications, we've held that there is a privilege as
19 to that information, so...

20 THE WITNESS: Okay.

21 MS. WESTFALL: Therefore, you're
22 instructing him not to answer if he received those
23 communications; is that correct?

24 MR. SWEETEN: I'm instructing him not to
25 reveal the substance of the communication that he



Colby Beuck

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1 received from constituents; that's correct.

2 Q. Have there been elections held since SB 14 was
3 signed into law in July -- I mean, pardon me -- in May
4 2011?

5 A. There was a -- yes, a constitutional election
6 -- a constitutional amendment election in November, and
7 we're currently having an election right now.

8 Q. To your knowledge, has the Secretary of State
9 or any County election officials enforced SB 14?

10 A. Not to my knowledge.

11 Q. Are you aware of any in-person voter
12 impersonation having occurred during these elections?

13 A. Not to my personal knowledge, no.

14 Could I get a drink of water real fast?

15 MS. WESTFALL: Why don't we take a little
16 break, because I think we'll be concluding and passing
17 the baton.

18 (Recess 5:05 p.m. to 5:16 p.m.)

19 Q. (By Ms. Westfall) I believe you testified
20 earlier about provisional ballots in SB 14?

21 A. Yes.

22 Q. Could you describe how provisional ballots work
23 in the bill?

24 A. Okay. There is a provision in the bill that
25 allows for a voter to cast a provisional ballot if they



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1 do not have the required photo identification.

2 Q. And could you describe the circumstances under
3 which a provisional ballot is counted?

4 A. Yes. They must -- they must state that they do
5 not have any other form of identification that meets the
6 requirements of Senate Bill 14. Wait. No. Excuse
7 me. Those are the exceptions.

8 Q. Is it true that a person who casts a
9 provisional ballot under SB 14 must present one of the
10 allowable forms of ID in order for it to be counted
11 except narrow circumstances related to religious
12 objection or natural disaster?

13 A. They have within six days to return and show
14 the identification.

15 Q. And if they don't show the identification or
16 fall into one of these exceptions, the religious
17 exception or the natural disaster exception, their
18 provisional ballot will not be counted; is that correct?

19 A. That is my understanding.

20 Q. And I think you testified earlier that there
21 may have been nonpublic investigations of the impact of
22 Senate Bill 14; is that correct?

23 MR. SWEETEN: Objection. You're asking
24 him to reveal information that's protected by the
25 legislative privilege. He's not going to answer that



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1 question. So I'm going to instruct you not to answer
2 the question, unless public information reveals the
3 answer, which I think by its own terms, it could not.

4 Q. (By Ms. Westfall) I believe you testified
5 earlier that you answered phone calls for Representative
6 Harless; is that correct?

7 A. Correct.

8 Q. Did you ever receive any phone calls from
9 anyone from the King Street Patriots regarding voter ID?

10 MR. SWEETEN: Objection, asked and
11 answered. I'm also going to object, because it
12 potentially implicates communications from a
13 constituent. And so with that, I'm going to go ahead
14 and instruct you not to answer that. It's already been
15 asked and answered.

16 Q. (By Ms. Westfall) Did you already -- did you
17 take any phone calls from Paul Bettencourt related to
18 photo ID on behalf of Representative Harless?

19 MR. SWEETEN: Objection, asked and
20 answered.

21 MS. WESTFALL: You may answer.

22 MR. SWEETEN: Same instruction.

23 MS. WESTFALL: Are you instructing him not
24 to answer?

25 MR. SWEETEN: I am. I think you're asking



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1 for constituent communications. I think that's within
2 the privilege. It's one of the categories that we've
3 been asserting.

4 MS. WESTFALL: Are you asserting a
5 privilege over the fact that a communication was made?

6 MR. SWEETEN: First of all, he's already
7 answered this question. So if you're just asking the
8 fact, was a communication made, I will let him answer
9 whether he received those. I think I know the answer,
10 though, but I'm going to let him answer it again.

11 So you can go ahead and do it, Colby, if
12 you can.

13 THE WITNESS: Okay.

14 Q. (By Ms. Westfall) Did you receive any phone
15 call from anyone with the King Street Patriots related
16 to photo ID that were made in to Representative Harless?

17 A. Yes.

18 MR. SWEETEN: That were made in to?

19 MS. WESTFALL: That were called in to
20 Representative Harless's office.

21 MR. SWEETEN: Okay. All right. He's --
22 he can answer as to whether contact was made. He will
23 not answer the substance.

24 Once again, the prefatory remarks on
25 your question, you're asking about substance, and I'm



Colby Beuck

May 14, 2012

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1 not going to continue to allow you to do that. That is
2 improper. You're asking about substance of
3 conversation. So I'll let him talk about contact.
4 We'll talk about the privilege log like you said, but
5 I'm not going to let him get into the substance of any
6 conversations.

7 MS. WESTFALL: I understand that. The
8 question's not improper. It's relevant. It's within
9 Rule 26. You're asserting a privilege. You can
10 instruct your witness not to answer. That's how we've
11 been operating today.

12 MR. SWEETEN: Okay. He's answered the
13 question I think you asked. I'm not going to let him
14 reveal substance of the communication. I've been very
15 clear about that.

16 MS. WESTFALL: I'm now going to ask my
17 question to make my record. I understand your position
18 on privilege.

19 Q. (By Ms. Westfall) What was the nature and the
20 substance of the communication and phone call from the
21 King Street Patriots regarding photo ID?

22 MR. SWEETEN: Do not answer the question
23 proposed. She's asking about substance of
24 communications. You don't have to do that.

25 Q. (By Ms. Westfall) Did you receive a phone



Colby Beuck

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1 call --

2 MR. SWEETEN: Let me just say for the
3 record, it's protected by the legislative privilege. Go
4 ahead.

5 Q. (By Ms. Westfall) Did you receive a phone call
6 from Paul Bettencourt regarding photo ID issues in
7 Representative Harless's office?

8 A. No.

9 Q. Did you receive any phone call from Catherine
10 Engelbrecht concerning photo ID issues?

11 MR. SWEETEN: Objection, asked and
12 answered.

13 Q. (By Ms. Westfall) You may answer.

14 A. Yes.

15 Q. What was that call regarding or concerning?

16 MR. SWEETEN: Don't reveal communications
17 between constituents that contacted your office. It's
18 covered by the legislative privilege.

19 Q. (By Ms. Westfall) In Texas, are there as many
20 driver's license offices as polling locations to your
21 knowledge?

22 MR. SWEETEN: You can answer if you know.

23 A. I don't know the exact numbers of either of
24 those.

25 Q. (By Ms. Westfall) Have there been any driver



Exhibit 5

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

ORAL DEPOSITION OF
REPRESENTATIVE PATRICIA HARLESS
May 15, 2012

ORAL DEPOSITION OF REPRESENTATIVE PATRICIA HARLESS, produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and numbered cause on the 15th day May, 2012, from 9:42 a.m. to 7:11 p.m., before Amy C. Kofron, CSR in and for the State of Texas, reported by machine shorthand, at the offices of the United States Attorney, 816 Congress Avenue, Austin, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.



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1 submitted for the 82nd Legislature related to photographic voter
2 identification?

3 A. It was a bill that was prefiled because it's got a low
4 number. Is it photographic or is it --

5 MR. SWEETEN: Just take your time. You can
6 review it.

7 A. I think this was the bill that was similar to the bill
8 filed in -- yeah, driver's license. Yeah. It's a photographic
9 identification bill, yes.

10 Q. Why did you take a more prominent position on this
11 issue in the 82nd Legislature?

12 MR. SWEETEN: Don't reveal any communications
13 that you've had with other legislators, staff, state agencies,
14 constituents or Texas Legislative Council, and don't reveal
15 thoughts, mental impressions or opinions about legislation. To
16 the extent you're not doing so, you can answer that question.

17 A. Well, it's difficult to answer that without revealing
18 communications with constituents, but I will say it's an issue
19 that was important to my district.

20 Q. Did you have any communications in 2010, prior to
21 filing this bill, concerning photographic voter ID with
22 constituents?

23 A. That's privileged.

24 MR. SWEETEN: I'm going to object to legislative
25 privilege.



1 Q. I'm going to ask not in favor or opposed, so I'm not
2 going to ask the position, but I want to ask as a matter of
3 subject matter whether you had any such conversations. And I
4 think that --

5 MR. SWEETEN: You can answer that question. You
6 can identify as to the subject matter that he's saying. You can
7 identify whether you had constituent communications and the form
8 and the approximate date, if you're able to.

9 A. Yes.

10 Q. Did you have -- did you speak with anyone from ALEC,
11 the American Legislative Exchange Council?

12 A. No.

13 Q. Did you speak with anyone from the King Street
14 Patriots?

15 A. No.

16 Q. Did you speak with anyone from any other Tea Party
17 groups?

18 A. No.

19 Q. Did you speak with Catherine Engelbrecht?

20 A. Prior to this legislation?

21 Q. Yes.

22 A. No.

23 Q. Did you speak with her after this legislation?

24 A. That's privileged.

25 Q. As a matter -- not as a matter of whether she



1 supported or opposed the legislation, but just about voter ID.

2 MR. SWEETEN: You can testify about whether or
3 not you had contact and with whom the contact was with. Don't
4 go into the subject matter of it.

5 A. I had contact with her after the committee hearing
6 on --

7 Q. Do you remember the approximate date?

8 A. No.

9 Q. But the hearing was -- do you remember which
10 particular committee hearing?

11 A. The committee hearing where this legislation went
12 through.

13 Q. Okay. And this was S.B. 14?

14 A. Yes.

15 Q. So March 2011?

16 A. Yes.

17 Q. Okay. Did you have any conversations with Paul
18 Bettencourt?

19 A. No.

20 Q. Did you have any conversations with any experts,
21 political scientists, concerning photographic voter ID before
22 filing this bill?

23 A. I would have to say probably no.

24 Q. Okay. Did you have any conversations with any
25 experts, including political scientists, at any time after you



1 filed this bill concerning photographic voter ID?

2 A. I have concerns that those are privileged. But we
3 were doing due diligence in the legislation, so I am probably
4 sure there were some conversations with experts.

5 Q. Just to jump back real quickly to Ms. Engelbrecht, how
6 many times did you speak with her?

7 A. Maybe once or twice.

8 Q. Was it on the phone?

9 A. She came by the office after the committee hearing.

10 Q. Okay. And how long was the conversation?

11 A. Ten minutes.

12 Q. Okay. Did you have any conversations -- excuse me.
13 Who are the experts who you had conversations with?

14 A. I can't recall. I don't know for sure that I did.

15 Q. Did you ever speak with an individual named Hans von
16 Spakovsky?

17 A. No, I didn't.

18 Q. Are you aware of any conversations that occurred with
19 Mr. Von Spakovsky?

20 A. I think my chief of staff may have, but I don't know
21 for sure.

22 Q. Okay. That's fine. Did you ever have any
23 conversations with George Hammerline?

24 A. Yes.

25 Q. When did that occur?



1 A. Probably after -- probably after they announced that I
2 would be carrying the bill in the House.

3 Q. And who is George Hammerline?

4 A. He's someone who works for one of the government
5 agencies in Harris County. I can't tell you which one. He used
6 to work with Paul Bettencourt before Bettencourt left office.

7 Q. Okay. Did you speak with him in person?

8 A. He came by the office.

9 Q. About how long was the conversation or conversations?

10 A. Longer than I wanted. Maybe five, ten minutes.

11 Q. Okay. Did you ever have any conversations with any
12 minority groups concerning photographic voter ID?

13 A. I can't tell you for sure, but I know that after it
14 was announced that we would carry the legislation, there were a
15 number of groups that came back to visit about --

16 Q. Do you recall any of the names of those groups?

17 A. It seems like League of Women Voters was probably one,
18 but I can't recall all of them. And I didn't meet with them.

19 Q. Who did?

20 A. I would -- I don't know if one of the interns did,
21 Julie or Colby. I'm not sure.

22 Q. Did you make any changes to either your proposed bill,
23 H.B. 112 or S.B. 14 as a result of concerns expressed by these
24 groups?

25 MR. SWEETEN: Hold on a minute. Don't reveal any



1 thoughts, mental impressions or opinions about legislation or
2 conversations or the substance of conversations with any
3 legislator, staff, state agency, TLC or constituents.

4 A. That is privileged.

5 Q. Okay. Who drafted the bill that you have in front of
6 you, H.B. 112?

7 A. Leg Council.

8 Q. What input did you provide?

9 MR. SWEETEN: Don't talk about the specific
10 substance of any input or communications you've had with TLC.

11 A. None.

12 Q. Who else provided input concerning the substance of
13 the bill?

14 MR. SWEETEN: Again, I think that you're asking
15 her to provide mental impressions, opinions about legislation or
16 conversations that she's had with the individuals or entities
17 named. So I'm going to instruct you not to answer based on
18 legislative privilege.

19 Q. If you can indicate if you're not answering on the
20 basis of privilege, that would be great.

21 A. Not answering based on privilege.

22 Q. Okay. Thank you. Are you aware of whether the
23 speaker provided input concerning the substance of H.B. 112?

24 MR. SWEETEN: Same objection, same instruction.

25 A. Privileged.



Exhibit 6

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
STATE OF TEXAS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 12-cv-128
)	(DST, RMC, RLW)
ERIC H. HOLDER, JR.,)	
)	
Defendant.)	
_____)	

ORDER

1. The State of Texas takes the position that *any* communications between a legislator and a constituent are covered by the state legislative privilege, even where the constituent voluntarily initiated the communication. Consistent with this position, Texas has thus far instructed its witnesses not to testify as to the nature of these communications, and has improperly prevented disclosure of the identity of the constituents. Accordingly, Defendants have been unable to obtain foundational information sufficient to assess the claim of privilege. It is hereby **ORDERED** that Texas shall not prevent its witnesses from testifying as to: 1) the name of the legislator or staff involved in such communications; 2) the name of the constituent(s) involved in the communication; 3) whether any other individuals were privy to the communication; 4) the date on which the communication occurred; 5) the forum or medium in which the communication took place; and 6) the nature or general subject matter of the communication. Once Defendants obtain this foundational information, the parties shall meet and confer regarding any claimed privilege and, if unable to agree, request a conference with the Court.

2. The State of Texas also takes the position that the state legislative privilege protects any testimony about the purpose of S.B. 14. Accordingly, Texas has instructed its witnesses not to testify on this point and has only allowed its witnesses to testify as to the purposes of S.B. 14 that are a matter of public record. It is hereby **ORDERED** that, to the extent such a privilege exists, that privilege does not protect testimony with respect to the general purpose or the purpose of a legislature as a whole in enacting S.B. 14 (as opposed to the subjective intent of the legislator). It is hereby **ORDERED**, therefore, that Texas shall not prevent its witness from testifying as to the purpose(s) of S.B. 14 as he/she understood it, regardless of whether the witness is called upon to answer questions outside the public record of S.B. 14. If, however, a question posed by Defendants calls upon the witness to reveal privileged communications (such as those with other legislators), Texas' witnesses may claim assertion of privilege over those communications, provided that the same foundational information as reflected in paragraph 1 is disclosed.

SO ORDERED.

Date: May 17, 2012

/s/
DAVID S. TATEL
United States Circuit Judge

/s/
ROSEMARY M. COLLYER
United States District Judge

/s/
ROBERT L. WILKINS
United States District Judge

Exhibit 7

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

STATE OF TEXAS,

Plaintiff

vs.

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

Defendant.

Case No. 1:12-CV-00128

(RMC, DST, RLW)
Three-Judge Court

SUPPLEMENTAL EXPERT DECLARATION OF THOMAS SAGER

1. I have reviewed the report of the Department of Justice's expert, Dr. Stephen Ansolabehere ("SA").

2. The State has requested that I provide additional analysis of the work of SA. In general my critique of SA's work is limited to his "Protocol for Matching Databases" that appears at ¶¶19-29 of his report. Several of SA's opinions involve qualitative assessments about who is or is not more likely to be affected by SB 14. I note those qualitative assessments, but it is not within the scope of my first declaration nor this supplemental declaration to opine as to their validity.

3. Specifically, I was asked to undertake two additional tasks:
(1) I was asked to match SA's VRNID dataset to the State Driver License ("DL") and License to Carry ("LTC") datasets using alternative matching

criteria, as well as to screen for “age over 65” and “voter registration suspense” statuses. Both the State and SA derived lists of registered voters that lack apparent matches to the DL and LTC datasets after application of their matching criteria. In my earlier declaration, I discussed the results of my attempts to find additional matches for the State’s list (“May No Match”). I am now asked to attempt to find additional matches for SA’s list (“VRNID”). (2) I was asked to consider if there might be statistical and/or data processing reasons that might account for the much larger size of SA’s no-match list (VRNID, with 1,501,977 ultimate entries) compared with the State’s May No Match list (with 588,095 entries).

4. I understand that SA cleaned both the State voter registration (“VR”) and DL/LTC databases before attempting to match them. SA reports that he found 13,072,454 records in the original VR database and that he removed 273 of these records because of duplicate voter ID numbers, 25 because of duplicate SSNs and birth dates, and 6,652 because of duplicate first name, last name, date of birth and street address (SA ¶ 19). SA also reports that he found 125,015 VR records lacking SSNs and having very common names and that he removed these records for most of his analysis (SA ¶ 22).¹

5. SA reports that he found 25,985,555 records in the original DL database and that he removed numerous records for the reasons listed in the

¹ In SA ¶ 26, SA refers to these 125,015 records as being in the DL database. I assume he means they are in the VR database.

following table (SA ¶ 20). This left 19,951,173 records in the DL database.²

He also reports that there are 266,151 DL records with “ambiguous status” that he both included and excluded in two separate runs of his analysis (SA ¶ 22).

SA Deletions from State DL Database Prior to his Matching Sweeps

A	287,236	no drivers license or State ID
B	3,144,900	drivers license expired for more than 2 years
C	1,535,504	drivers license expired between 60 days and 2 years
D	779,918	deceased driver
E	724,974	duplicate SSN
	6,472,532	TOTAL

6. SA also reports that he found 840,664 records in the original LTC database and that he removed numerous records for the reasons listed in the following table (SA ¶23). This left 592,270 records in the LTC database.³

SA Deletions from State LTC Database Prior to his Matching Sweeps

2,338	Deceased
1	Unreadable
38,919	Non-U.S. citizen
12,437	failed application
194,669	nonrenewable expired license
248,364	TOTAL

² Apparently, the deletions described by SA in SA ¶ 20 are not mutually exclusive, for the total deletions that he enumerates would leave $25,985,555 - 6,472,532 = 19,513,023$ records instead of the 19,951,173 that he asserts.

³ Subtraction yields $840,664 - 248,364 = 592,300$ remaining records – a small discrepancy from the 592,270 reported by SA.

7. With the thus-cleaned databases, SA conducted three consecutive and apparently cumulative sweeps to find matches for VR records in the DL and LTC databases based on the following matching criteria, in the order given:

(Sweep #1) identical SSN

(Sweep #2) identical date-of-birth and identical first name and identical last name (all three criteria required for a match)

(Sweep #3) identical date-of-birth and identical first name and identical last name and identical middle name (all four criteria apparently required for a match)

8. As a side note, it is not clear whether SA's sweep #3 will pick up any additional records. Any records in VR that match DL/LTC on the basis of DOB+FN+LN+MN in sweep #3 will have already been matched on the basis of DOB+FN+LN in sweep #2.

9. As a result of application of his three sweeps, SA matched all but 1,893,143 VR records to DL/LTC (SA ¶ 26). This count includes 125,015 with "insufficient information to match" and 266,151 with "ambiguous DL status" (SA ¶ 26). These 1,893,143 "no match" VR cases constitute SA's VRNID list. It is this VRNID database (reduced by exclusion of the 125,015 and 266,151 aforementioned records) that the State has asked me to try to match to the DL/LTC databases.

10. SA has provided his VRNID database to the State (absent sensitive SSN data). The State was able to resupply the missing SSN information with high confidence by matching on the unique voter ID field. Therefore, the VRNID was available to me for various types of matching strategies. After matching VRNID to DL/LTC, I found that most of the records in VRNID either match DL/LTC or fall into special categories like “over age 65” that I understand are significant for the purpose of SB 14.⁴

11. Before I discuss my attempts to match SA’s VRNID to DL/LTC, I will discuss a number of obvious problems with the data cleaning decisions that SA made that have the effect of inflating the number of entries in his VRNID.

12. First, SA removed 779,918 deceased drivers from DL prior to his matching sweeps, but he did not remove them from VR (see category D in my ¶5). Therefore, any deceased drivers who are in the VR database will remain unmatched and will end up in VRNID. Because of this, there are 57,718 deceased persons in SA’s VRNID. Presumably, the dead do not vote and therefore should not be included on a list of those potentially affected by SB 14. SA could have avoided this problem by leaving deceased drivers in the

⁴ Because I was out of the state during the period of this analysis and because of the sensitivity of social security information, the analysis was performed by a technician at the Office of the Attorney General Legal Technical Support division under my remote supervision and direction. I reviewed and quality checked all of the matches by receiving random samples and reviewing them for accuracy.

DL database. By that means, deceased (and formerly driving) voters could have been matched and removed and not end up in VRNID.

13. Second, SA removed 4,680,404 records from DL prior to his matching sweeps on account of expired drivers licenses (categories B and C in my ¶ 5). These removals are problematic for a number of reasons:

14. (i) Some expired licenses no doubt belong to voters who have moved out of State and therefore are no longer eligible to vote in Texas. Such (former) voters will end up in VRNID, although they – like deceased voters – presumably should not be counted among the unmatched.

15. (ii) I understand that registered Texas voters who are over age 65 are automatically entitled to vote by mail and disabled voters are exempt from photo ID requirements. I understand that these exemptions apply regardless of the expiration status of a voter's driver license. No doubt many voters holding expired licenses are over 65 or disabled. Deletion of expired drivers licenses from DL would be unexceptionable for the purpose of age-over-65 determination, provided an additional screen of the VR database for age were added.⁵ Disabled voters with expired licenses would end up in VRNID without the capacity to detect their exemption from SB 14 on account of disability.

16. (iii) I understand that drivers holding licenses that are expired less than two years may conveniently renew online, and many in this group

⁵ SA did not screen for either disability or age over 65.

may choose to do so. It is clear that the effect of the three factors listed above is to inflate the size of SA's VRNID.

17. Third, SA removed 724,974 records from DL prior to his matching sweeps on account of duplicate SSNs (category E in my ¶ 5). These removals also are problematic. They do not affect SA's sweep #1 – on SSN – but they do affect his sweep #2 and sweep #3. The reason is subtle but clear. The following is an illustrative hypothetical example. Suppose that I am registered to vote as Tom Sager with SSN=3333 and correct birth date.⁶ Suppose further that I have two DL entries – one as Tom Sager with SSN=111-22-3333 and the other as Thomas Sager with SSN=111-22-3333, and both have my correct birth date. SA's procedure would delete one of my two DL entries before matching. Whichever one he deletes, he will not match me on his sweep #1 and will need to proceed to sweeps #2 and #3. If he deletes the Tom Sager DL entry, then he will fail to match me on sweeps #2 (DOB+FN+LN) and #3 (DOB+FN+LN+MN) and will put me into VRNID. Only if he deletes the Thomas Sager DL entry will he successfully match me and keep me out of VRNID. In other words, it is not necessary to delete duplicate SSNs from DL/LTC prior to matching sweeps. Retention of SSN duplicates increases the chance of matching voters to true variant names and spellings. Deletion of SSN duplicates tends to inflate the size of VRNID.

⁶ 54.6% of the VR database lack full SSN.

18. There remains one SA deletion category (A) referenced in my ¶5 that I have not yet discussed. Category A numbers 287,236 DL entries that SA removed because no license or ID was shown as issued. These removals are unobjectionable on their own but result in no major difference. I inquired whether the State had deleted Category A from the DL database for the May No Match dataset of 588,095 voters. Since it had not, on this account the size of the May No Match database was slightly smaller than it should have been. However, the difference was small – only 8,228 records.

19. SA also made a deletion from the LTC database that will tend to inflate his results. SA deleted 38,919 records because they were recorded as “non-citizens” in the LTC database. Non-citizens are not eligible to vote, and so if these records matched to a VR entry that would either indicate: (a) an ineligible voter that should not be counted as a bona fide voter without ID or (b) a voter who had subsequently naturalized and had an LTC ID and therefore should not be counted as a voter without ID. Either way, SA should not have eliminated these entries. However, the LTC dataset produces so few additional matches that the elimination of this small number of records likely is not nearly as significant as the SA’s other deletions of deceased and expired records from the DL dataset.

20. I now discuss the protocols for and results of my attempts to match SA’s VRNID database to the DL/LTC databases. In spite of the problems with the construction of SA’s VRNID database that I discussed in

the preceding paragraphs, I took SA's VRNID database as he provided it for the purpose of my assignment to match it to the DL/LTC databases. Except that, for this purpose, the VRNID database to match consists of the 1,893,143 "no match" VR cases identified by SA, reduced by exclusion of the 125,015 and 266,151 VR records that SA identified as having "insufficient information" or "ambiguous DL status" (see my ¶ 9).

21. Working with this VRNID database of 1,501,977 voter records, I supervised a re-match to the full DL/LTC databases as they were prior to SA's cleaning.⁷ Performing this re-match required first re-appending the SSN data that SA had redacted from the version of VRNID that he delivered to the State.

22. The following four match sweeps were run to match SA's VRNID to both the DL and LTC databases. In each sweep, identical matches on all criteria listed were required.

- a. First Name and Last Name and DOB
- b. SSN9
- c. First Name and Last Name and SSN4
- d. SSN4 and DOB

⁷ As I indicated above, I remotely supervised OAGLTS personnel in the matching since I was out of the state.

23. In the same manner as described in my June 1, 2012 declaration, I also identified “suspense” entries and over-age-65⁸ entries for SA’s VRNID database, as I had done for the State’s May No Match database.

24. Finally, as a check on SA’s cleaning of the DL database, I directed a separate match of VRNID to only those DL records that SA cleaned from the DL database on account of no ID or out-of-state residence, deceased drivers, or expired licenses. The purpose of this separate and more restricted sweep is to discover the matches that SA failed to find as a result of his exclusion of these categories of DL entries. For this separate sweep, all four of the matching criteria at my ¶ 22 were employed. I first discuss the results of this check on the effects of SA’s cleaning of the DL database.

25. First, only 746 of VRNID match a no-ID DL entry.

26. Second, SA’s removal of DL records for deceased drivers but not for deceased voters makes a more substantial difference. 57,718 of VRNID match DL entries for deceased drivers.

27. Third, 468,775 records in VRNID match a DL record with an expired license.

28. The following table shows a summary of the results of matching all of VRNID to the records that SA cleaned from DL by cleaning category matched.

⁸ Over age 65 as of November 6, 2012.

	DPS_EXPIRED	DPS_OTHER_JURIS	DPS_DECEASED	DPS_Nold	Count
	1	1			102,951
	1		1		28,693
	1				337,131
		1			10,320
			1		29,025
				1	746
Not in a "cleaning" category					993,111
Total					1,501,977

29. The following table expands the preceding table by adding a breakdown by over-age-65 status and by "suspense" status. I understand that voters over the age of 65 are not required to present a photo id in order to vote under SB 14 because they can vote by mail. I further understand that a voter registration in "suspense" means that mail sent to the voter has been returned to sender and that the voter has not yet verified a new address, meaning they may have moved out of state or otherwise become ineligible. Although one can tally from this table 468,775 records in VRNID that match a DL record with an expired license, 110,073 of these are for voters over the age of 65, and 138,426 of these entries are in suspense status.

65	Suspense	DPS_EXPIRED	DPS_OTHER_JURIS	DPS_DECEASED	DPS_NoId	Count
1	1	1	1			6,318
1	1	1		1		5,999
1	1	1				17,320
1	1		1			196
1	1			1		5,095
1	1				1	4
1	1					25,792
1		1	1			5,019
1		1		1		12,733
1		1				62,684
1			1			758
1				1		14,048
1					1	36
1						174,415
	1	1	1			41,492
	1	1		1		3,064
	1	1				64,233
	1		1			2,430
	1			1		2,873
	1				1	156
	1					161,127
		1	1			50,122
		1		1		6,897
		1				192,894
			1			6,936
				1		7,009
					1	550
Not in a "cleaning" category or suspense or over 65						631,777
Total						1,501,977

30. I turn now to the results of matching VRNID to DL/LTC using the four matching sweeps outlined in my ¶ 22. Exhibit A to this declaration shows the results of this re-match analysis, with separate break-outs for each of the four sweep criteria applied, as well as the overlaps among the four

sweep criteria, and a further breakdown for over age 65 status and suspense status. A partial summary of these results is shown in the table below.

Criteria	Number of VRNID entries
Matched to DPS DL or LTC using any criteria from ¶ 22 (a) – (d)	814,903
Over 65	330,377
Suspense	335,939
Reported ID Number to SOS but did not match any of above	261,887

31. By summing all rows in Exhibit A, one can readily calculate that out of 1,501,977 entries in SA's no-match VRNID database, a total of 1,072,366 voter entries either match one or more of the four matching sweeps in my ¶ 22 (a) – (d), or are over 65 or are in suspense. Furthermore, by summing appropriate rows in Exhibit A, one can calculate that 814,903 of these VRNID entries qualify as matches by application of one or more of my four matching sweeps. This count includes 210,601 matches on full SSN9. By summing appropriate remaining rows, one computes that an additional 141,182 voter entries are over 65, and the balance of 117,094 voter entries are in suspense. That leaves a remainder of 429,611 ($= 1,501,977 - 1,072,366$) as yet unaccounted for. This number includes 746 VRNID entries that match to the no-ID category in the DL database. An additional 261,887 are voter registrants who reported no official ID number to the Texas Secretary of State. This leaves only 167,724 of VRNID unaccounted for. Many of these entries (and the larger set of approximately 700,000 entries that do not formally "match" into the DPS database using the criteria of ¶ 22

(a)-(d) likely do have undetected matches in the DPS database. Over 50% of the VR database lacks full SSN data, but the discussion below and in Exhibit B show that there is a very high rate of name and DOB mis-matches for SSN matching records through alternate names, marriage, or data entry errors.

32. As noted in the table above (my ¶ 30), 261,887 VR entries lack an official ID number. I understand that when a voter registers, the Texas Secretary of State (“TXSOS”) records the voter’s assertion that he/she has state identification. I understand that when in the creation of the “No Match” sets that I discussed in my first declaration, any voter registration entry that includes state ID as belonging to someone was removed from the No Match set. Thus, TXSOS generally took people at their words that they had driver licenses or state IDs when they registered. These individuals (those who did not otherwise match) are listed in the last row of my matching table (my ¶ 30), above, and represent a significant number.

33. As I also noted, 167,724 entries in SA’s VRNID database remain unaccounted for by the above procedures. Of these remaining 167,724 voter entries, 31.6% have Spanish surnames, per the appropriate VR data field. This rate is 9.3% higher than the overall Spanish Surname registration rate of 22.25% reported by SA (SA ¶ 33). The difference represents less than 16,000 ($9.3\% \times 167,724$) of the unaccounted for voters in VRNID. 16,000 represents approximately 0.55% of the total Spanish surname population of registered voters. On general statistical and data processing grounds, there

are eminently reasonable bases for doubting the meaningfulness of such a relatively small difference. Although such a difference could be “statistically significant” by the rote application of a standard statistical test, neither the statistical grounds for use of such a test nor the justification for interpreting its meaning as implying lesser Hispanic access to State identification has been established to a reasonable certainty, in my opinion.

34. For example, if Hispanics have even a slightly higher rate than non-Hispanics for holding the appropriate federally issued identification, the ethnic difference could be mooted. Also, uncertainties about the quality of data (about which I have much more to say below) could turn 16,000 into a rounding error. If Hispanics have even a slightly higher probability than non-Hispanics of name variants or misspellings, SA’s match sweeps will tend to place relatively more of them into his unmatched VRNID database.

35. The operation of such a selection bias can be demonstrated for females in SA’s VRNID database. Females appear to be over-represented in VRNID. SA’s sweep matching criteria are less likely to match females than males. One reason is that many females change their last names when they marry and therefore are more likely to have different last names in VR than in DL/LTC. SA’s matching criteria that require identical first and last names will assign such females incorrectly to VRNID. The effect can be substantial. In an empirical analysis of VRNID that I discuss in greater detail in Exhibit C. I took a random sample of 1,000 entries from a subset of VRNID known to

have matches in DL/LTC with very high confidence. 650 of the 1,000 are female and only 350 are male. Such a disparity cannot be explained by chance. I counted approximately 207 females who appear to have changed their last names. Further analysis in Exhibit C confirms that in matching criteria that do not require first and last name matching, there is a selection bias for male matches.

36. As a statistician, I often perform statistical tests of the difference between two percentages. Those tests are designed to determine whether a difference is real and not attributable to chance; the tests are not designed to determine whether the difference is meaningful, nor to determine the cause of the difference. If one has enough data, nearly every difference will test as real. Meaningfulness must be judged by other criteria. Moreover, the validity of such tests depends upon satisfying the assumptions upon which they depend. Furthermore, if one is not careful, then the cause of a statistically significant difference may not be what one assumes. For example, a higher rate of Spanish than non-Spanish surnames among unmatched voters may not result from less access to state identification by those with Spanish surnames but may result from a higher rate of data errors in Spanish surnames. Above, I cite the over-representation of females in VRNID relative to males. Does this imply that Texas females have less access to State identification than males? No, it just means that there are more “data errors” for females in the voter and driver license databases on

account of many Texas females following the social custom of adopting their husbands' last names in marriage.

37. In the current case, both SA and I have reported most of our tallies with a precision that belies potentially large uncertainties about the quality of the data that we used and limitations in the available means for measurement. I think this point about data uncertainties is quite important. In fact, I have conducted an investigation into the quality of some of the data in VRNID. I will briefly mention five data problems here, but leave the detailed discussion to Exhibit B.

38. Name variants. Many names have variants and nicknames. "Thomas", "Tom", "Tommy" are all variants of the same name. The requirement of an identical match on name will fail to match if the VR database has a different variant from the DL/LTC database.

39. Name misspellings. A clerical error in reading or typing a name can result in a misspelling and consequent mismatch. The requirement of an identical match on name will fail to match me if I am in the VR as "Tomas" and in DL as "Thomas".

40. Married female name changes. If my wife had a driver's license before she married me and registered to vote after marriage and changed her last name after marriage, then she would be in DL as "Alexander" and in VR as "Sager". Consequently, the requirement of an identical match on name will fail to match her.

41. Date of Birth. Clerical errors in reading and/or data input may result in dates of birth that are slightly different between VR and DL/LTC. For example, a hand-written date of “4/19/46” might be misread as “4/14/46” if the “9” is misread as a “4”.

42. Differential name error rates by ethnicity. To a lay mind, it is possible to think of reasons why Spanish surnames may be more prone to data entry error than non-Spanish surnames. For example, a data entry clerk may not be familiar with Spanish surnames and perhaps be more likely to misspell or misinterpret them. For example, is a hand-written “DE LA CRUZ” one word, two words, or three words – or should it be “DE LA CRUS?”

43. Exhibit B discusses a quantitative analysis of data issues in SA’s no-match VRNID by using a random sample of 1000 entries taken from a subpopulation of VRNID entries that are known with high confidence to have been correctly matched to the same people in DL/LTC. Since this sample of 1000 people have been correctly matched, their first names, last names, and dates of birth should be the same in VR and in DL/LTC. Yet many are not. 340 fail to match on exact first name, 388 fail to match on exact last name, and 368 fail to match on exact date of birth. To be sure, such high error rates should not be extrapolated to the VR and DL/LTC databases generally, since the VRNID database was formed from VR entries whom SA had difficulty matching on these criteria. However, this sample of 1,000 known true matches provides a laboratory for testing the prevalence of

VRNID data issues without the otherwise legitimate concern that differences in names and DOBs might be true differences resulting from the mismatch of different people. These are the same people, yet their VR data is often not the same as their DL/LTC data. The effect of data errors in first name, last name, and/or date of birth is to reduce the chance of finding true matches and hence to inflate the size of VRNID.

44. Exhibit D discusses the expected matching error rates on the matching criteria other than SSN9.

I swear the foregoing is true and correct to the best of my knowledge.

Dated: June 11, 2012

Respectfully submitted.

Thomas W. Ager

Kihei, Hawaii

Exhibit 8

Appearances continued:

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1 I think even when we, once we actually talked to some of
2 the agencies, it was unclear even if we had started way earlier
3 that we could get the data in time. So we went about figuring
4 it out.

5 JUDGE TATEL: That's not what record shows, sir.

6 I had a hearing where we went through that chapter and
7 verse, sir. You could have gotten it from some of these
8 agencies in as short of two or three weeks.

9 MR. HUGHES: Your Honor, I wasn't participating in
10 that hearing. I'm sorry and I'm not totally familiar with the
11 details.

12 But given what happened, the way we analyzed whether
13 Texans possessed all forms of SB 14 ID was to conduct a survey
14 asking those questions which again, Professor Ansolabehere
15 suggested was a valid methodological approach.

16 I want to turn now to what I call show stopper number
17 two on Professor Ansolabehere's approach which is he employed
18 the same flawed approach that brought down the database match
19 in Crawford.

20 Mr. Mortara showed in his opening the Crawford District
21 Court opinion that said the database match there was hopelessly
22 flawed because the expert in Crawford did not attempt to clean
23 the bloated voter rolls and the Supreme Court did not disturb
24 that holding of course.

25 Here the undisputed evidence from the testimony of Keith

1 Ingram, the director of Texas Elections is that the Texas rolls
2 are bloated.

3 It's also undisputed that Professor Ansolabehere did
4 nothing to clean the registered voter list. He cleaned the DPS
5 but not the registered voter list, and that's why we have over
6 50,000 dead people that Professor Ansolabehere said will be
7 disenfranchised and hundreds of thousands of people like
8 Mr. Mortara's brother-in-law Mr. Craft, our law partner Mr.
9 Byers who the Department of Justice says will be
10 disenfranchised who moved.

11 Those are nice celebrity examples that Mr. Mortara
12 showed yesterday but there are categorical problems with what
13 Professor Ansolabehere did and it's exactly the same thing that
14 brought down the list in Crawford, and the fact that he didn't
15 clean the rolls and that the rolls are bloated, those are
16 undisputed facts and sufficient to bring down his analysis.

17 JUDGE COLLYER: So can we now take this down? It's
18 in the way of people.

19 MR. HUGHES: I was going to come to it later.

20 JUDGE COLLYER: Never mind.

21 MR. HUGHES: The third show stopper, and this
22 requires a little bit more explanation is Professor
23 Ansolabehere employed a completely biased matching protocol.
24 We are aware of the bias against women. I won't spend any time
25 on that.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,

Plaintiffs,

v.

RICK PERRY, *et al.*,

Defendants.

Civil Action No. 2:13-cv-193 (NGR)

UNITED STATES OF AMERICA,

Plaintiff,

TEXAS LEAGUE OF YOUNG VOTERS
EDUCATION FUND, *et al.*,

Plaintiff-Intervenors,

TEXAS ASSOCIATION OF HISPANIC
COUNTY JUDGES AND COUNTY
COMMISSIONERS, *et al.*,

Movant-Intervenors,

v.

STATE OF TEXAS, *et al.*,

Defendants,

TRUE THE VOTE,

Movant-Intervenor.

Civil Action No. 2:13-cv-263 (NGR)

TEXAS STATE CONFERENCE OF NAACP
BRANCHES, *et al.*,

Plaintiffs,

v.

JOHN STEEN, *et al.*,

Defendants.

Civil Action No. 2:13-cv-291 (NGR)

[PROPOSED] ORDER DENYING MOTION TO INTERVENE OF TRUE THE VOTE

On this date, the Court considered the Motion to Intervene of True the Vote, memorandum in support, and the response thereto.

Accordingly, it is ORDERED that the Motion to Intervene of True the Vote is DENIED in all respects.

SIGNED on this _____ day of _____, 2013.

NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE