IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA; ERIC H. HOLDER, JR., in his official capacity as Attorney General Defendant, and SENATOR WENDY DAVIS, REPRESENTATIVE MARC VEASEY JOHN JENKINS, VICKI BARGAS, and ROMEO MUÑOZ, Defendant-Intervenors, and MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES (MALC), Proposed Defendant-Intervenor.	No. 1:11-cv-01303 (RMC-TBG-BAH) [Three Judge Court]

APPLICANT MALC'S MOTION TO INTERVENE AS DEFENDANT

Pursuant to Fed. R. Civ. P. 24, the Mexican American Legislative Caucus, Texas House of Representatives ("MALC"), respectfully moves to intervene in this case as a party defendant.

Applicant is the nation's oldest and largest Latino legislative caucus. The Caucus is a non-profit organization established to serve the members of the Texas House of Representatives in matters of interest to the Mexican American community of Texas, in order to form a strong

and cohesive voice on those matters in the legislative process, including redistricting. Its members are voters, and most are elected from districts that are majority Latino in citizen voting age population and in registration. Most of the Applicant-organization's members are Mexican American and Latino, and thus are protected by the provisions of the Voting Rights Act, including Section 5 of the Act. 42 U.S.C. § 1973c.

For the reasons set forth in the accompanying memorandum, Applicant is entitled to intervention as of right under Fed. R. Civ. P. 24(a); in the alternative, this Court should permit Applicant to intervene permissively under Fed. R. Civ. P. 24(b).

Prior pleadings in the instant action indicate that Plaintiff opposes any motion to intervene by Defendant-Intervenor applicants [doc. 8], while Defendants do not oppose permissive intervention [doc. 6].

Dated: August 17, 2011

Respectfully submitted,

s/ Mark A. Posner
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Intervene, the memorandum in support, a proposed order, and the certificate required by Local Rule 7.1 were served on counsel of record through electronic service pursuant to the ECF system, on August 17, 2011.

s/ Mark A. Posner
Mark A. Posner
One counsel for Intervenor-Applicant MALC

IN THE UNITED STATES DISTRICT COURT
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STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA; ERIC H. HOLDER, JR., in his official capacity as Attorney General Defendants, and SENATOR WENDY DAVIS, REPRESENTATIVE MARC VEASEY JOHN JENKINS, VICKI BARGAS, and ROMEO MUÑOZ, Defendant-Intervenors, and MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES (MALC), Proposed Defendant-Intervenor.	)	No. 1:11-cv-01303 (RMC-TBG-BAH) [Three Judge Court]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MALC'S MOTION FOR LEAVE TO INTERVENE AS DEFENDANT

This action was brought by the State of Texas seeking preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, of its post-2010 Census redistricting plans for Congress, the Texas House of Representatives, the Texas Senate, and the State Board of

Education. The Mexican American Legislative Caucus of the Texas House of Representatives ("MALC") respectfully seeks to intervene as of right and also seeks permissive intervention, pursuant to Rule 24 of the Federal Rules of Civil Procedure. It is well established that "[p]rivate parties may intervene in § 5 actions" under Rule 24. *Georgia v. Ashcroft*, 539 U.S. 461, 477 (2003). MALC seeks to intervene to oppose preclearance of the redistricting plans before this Court.

I. Introduction

Section 5 of the Voting Rights Act provides that, whenever a covered State such as Texas "shall enact or seek to administer" a change in a voting practice or procedure, including redistricting plans, that jurisdiction must obtain federal preclearance by demonstrating to this Court (in a declaratory judgment action), or to the Attorney General (in an administrative proceeding), that the voting change "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or [membership in a language minority group]." 42 U.S.C. § 1973c(a). A Section 5 jurisdiction may not implement a voting change unless and until preclearance is obtained. *Clark v. Roemer*, 500 U.S. 646, 652 (1991).

Applicant-organization is the nation's oldest and largest Latino legislative caucus. The Caucus is a non-profit organization established to serve the members of the Texas House of Representatives in matters of interest to the Mexican American community of Texas, in order to form a strong and cohesive voice on those matters in the legislative process, including redistricting. Its 39 members are registered voters in Texas and most are elected from districts that are majority Latino in citizen voting age population and in registered voters. Similarly, most MALC members are Mexican Americans and Latinos, i.e., persons protected by the provisions of the Voting Rights Act, including Section 5 of the Act. 42 U.S.C. § 1973b(f)(1) ("The

Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope"); 42 U.S.C. § 1973*l*(b)(3) (defining "language minorities" and "language minority group" to include "persons who are . . . of Spanish heritage").

MALC currently has pending in the District Court for the Western District of Texas a suit filed under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, asserting that the redistricting plans at issue in the instant case for Congress and the state House of Representatives deny Mexican-American voters an equal opportunity to participate in the electoral process, in violation of Section 2. *MALC v. State of Texas*, No. 5-11-cv-360 (consolidated case number). That case currently is set for trial on September 6, 2011. However, if this Court denies Section 5 preclearance to these plans, the Section 2 challenge will no longer present a live controversy, at least as to the portions of the plans that form the basis for the denial of preclearance.

II. Applicant Should Be Granted Intervention to Oppose Section 5 Preclearance

A. Intervention is Routinely Granted in Section 5 Declaratory Judgment Actions

The District Court for the District of Columbia has regularly and routinely granted Rule 24 intervention in Section 5 declaratory judgment actions, such as the instant case, to individuals and organizations who are directly impacted by the voting changes for which Section 5 preclearance is being sought, and who seek to intervene as defendants to oppose preclearance, so long as the intervention application is timely. *See ,e.g., Georgia v. Ashcroft*, 539 U.S. at 477; *Bossier Parish School Board v. Reno*, 157 F.R.D. 133, 135 (D.D.C. 1994); *Texas v. United States*, 802 F. Supp. 481, 482 n. 1 (D.D.C. 1992); *County Council of Sumter County, SC v. United States*, 555 F. Supp. 694, 697 (D.D.C. 1983); *City of Lockhart v. United States*, 460 U.S. 125, 129 (1983); *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982); *City of Port Arthur, Texas v. United States*, 517 F. Supp. 987, 991 n.2 (D.D.C. 1981); *City of Richmond, Virginia v. United*

States, 376 F. Supp. 1344, 1349 n. 23 (D.D.C. 1974), *remanded on other grounds*, 422 U.S. 358 (1975); *Beer v. United States*, 374 F. Supp. 363, 367 n.5 (D.D.C. 1974), *remanded on other grounds*, 425 U.S. 130, 133 n.3 (1976). *See also Shelby v. Holder*, no. 1:10-cv-651 (D.D.C. Aug. 25, 2010, Doc. 29) (granting intervention to individuals and organizations to oppose suit challenging constitutionality of Section 5); *Laroque v. Holder*, no. 1:10-cv-561 (D.D.C. Aug. 25, 2010, Doc. 24) (same); *Nw. Austin Mun. Utility District No. One v. Holder*, 573 F. Supp. 2d 221, 230 (D.D.C. 2008) (granting intervention to individuals and organizations to oppose suit challenging constitutionality of Section 5 and seeking bailout from Section 5 coverage).

Indeed, in the instant litigation, this Court only yesterday granted intervention to a separate group of individuals to oppose preclearance of the redistricting plans at issue in this case. [Doc. 11].

B. Applicant Should Be Granted Intervention as of Right

The standards for intervention as of right are set forth in Rule 24(a) of the Federal Rules of Civil Procedure. In relevant part, Rule 24(a) provides:

> On timely motion, the court must permit anyone to intervene who: . . . (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Thus, in order to rule on Applicant's motion, this Court must consider the four factors enumerated in Rule 24(a)(2): (1) timeliness; (2) Applicant's interest in the transaction which is the subject of the action; (3) whether Applicant is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) whether Applicant's interest is adequately represented by the existing parties. As demonstrated below, the Applicant satisfies all four factors required to intervene under Rule 24(a)(2). In addition, the

D.C. Circuit has held that a party seeking to intervene as of right as a defendant must satisfy the basic standing requirements of Article III of the Constitution. *Fund For Animals Inc. v. Norton*, 322 F.3d 728, 732-33 (D.C. Cir. 2003). *But see Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) (questioning whether an applicant to intervene as a defendant need establish standing since "the standing inquiry is directed at those who invoke the court's jurisdiction," and holding that "any person who satisfies Rule 24(a) will also meet Article III's standing requirement."). To the extent that a separate standing inquiry is relevant here, Applicant satisfies this as well.

1. Applicant's motion is timely.

Applicant's motion to intervene in the instant Section 5 declaratory judgment action is timely. Defendants have not filed an Answer. No discovery has been undertaken, no scheduling or dispositive orders have been entered in the case, and no trial date has been set. Granting intervention would not, therefore, cause any delay in the trial of the case nor prejudice the rights of any existing party. *See, e.g. Nationwide Mut. Ins. Co. v. Nat'l REO Mgmt.*, 205 F.R.D. 1, 6 (D.D.C. 2000) (holding applicants' motion timely where six months had elapsed since filing of lawsuit); *Bossier Parish School Board v. Reno*, 157 F.R.D. at 135 (permitting intervention in a Section 5 declaratory judgment action on the same day that the court held the first scheduling conference); *Council of Sumter County, SC v. United States*, 555 F. Supp. at 697 (permitting applicants to intervene in a Section 5 preclearance lawsuit at the close of discovery and on the eve of argument on motions for summary judgment).

2. Applicant has a substantial interest in the underlying litigation.

In determining the sufficiency of an intervenor's interest under Rule 24(a), courts apply a "liberal approach" by permitting the involvement of "as many apparently concerned persons as is

compatible with efficiency and due process." *S. Utah Wilderness v. Norton*, No. 01-2518, 2002 WL 32617198, *5 (D.D.C. June 28, 2002) (internal citations omitted). To demonstrate a sufficient "interest" in the litigation, prospective intervenors must show a "direct and concrete interest that is accorded some degree of legal protection." *Diamond v. Charles*, 476 U.S. 54, 75 (1986).

The legislators who are members of MALC clearly are threatened with injury by the State of Texas' adoption of statewide redistricting plans which violate the nondiscrimination requirements of Section 5. As registered voters of the State, as individuals elected by persons specifically protected by Section 5, and as individuals who themselves are members of a protected group under Section 5, they will be directly injured by the State's proposal to implement plans that deny Mexican-American citizens a nondiscriminatory opportunity to elect representatives of their choice. The interests that MALC seeks to protect also are clearly germane to the organization's purpose, and this litigation does not require any special participation by MALC's individual members, except to the extent that one or a few members may be called to testify regarding the factual issues presented by the application of Section 5 to the instant redistricting plans.

3. Disposition of this case may impair the interests of the Applicant.

Beyond demonstrating an interest in the underlying litigation, Applicant must show that its interest "*may*" be impaired or impeded by the disposition of the action. Fed. R. Civ. P. 24(a)(2) (emphasis added). In interpreting this requirement, the D.C. Circuit has held that this factor "look[s] to the practical consequences of denying intervention, even where the possibility of future challenge to the regulation remains available." *Natural Res. Def. Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977) (internal quotation marks omitted).

As noted, the State of Texas is legally precluded under Section 5 from implementing the statewide redistricting plans at issue in this litigation. On the other hand, if preclearance is granted by this Court, the State will be free to implement the plans, subject to a possible ruling by the district court in Texas that the plans violate Section 2 of the Voting Rights Act.

Applicant's interest with regard to a denial of Section 5 preclearance is not protected by the filing of the Section 2 lawsuit in Texas. Section 5 was enacted to "shift the advantage of time and inertia from the perpetrators of the evil [of discrimination] to its victims," *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966), and thus provides a unique remedy for voting discrimination that is separate and apart from the remedies provided by other sections of the Voting Rights Act, including Section 2. *Reno v. Bossier Parish School Board*, 520 U.S. 471, 476 (1997) (Section 5 and Section 2 "combat different evils and, accordingly, . . . impose very different duties upon the States"); *Holder v. Hall*, 512 U.S. 874, 883 (1994) (plurality opinion) (noting how Section 5 and Section 2 "differ in structure, purpose, and application"). Among other things, Section 5 and Section 2 impose different legal standards of liability. Section 5 bars voting changes that have a discriminatory purpose or a retrogressive effect. 42 U.S.C. § 1973c; *Beer v United States*, 425 U.S. 130, 141 (1976) (defining discriminatory effect under Section 5 as the absence of retrogression); 28 C.F.R. § 51.54 (describing the Section 5 purpose and effect standards). On the other hand, Section 2 prohibits the implementation of any voting practice that allows protected individuals "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b). *See generally Thornburg v. Gingles*, 478 U.S. 30 (1986). In addition, Section 5 provides that covered jurisdictions have the burden of proof to demonstrate that their voting change is nondiscriminatory, *Georgia v. United States*, 411 U.S. 526, 538 (1973), whereas Section 2

plaintiffs – like plaintiffs in any affirmative litigation – have the burden of demonstrating that the challenged voting practice violates federal law.

MALC will not have any other recourse to protect its interest in preventing the implementation of redistricting plans that violate Section 5. As provided by Section 5 itself, the District of Columbia District Court is the only court that may decide whether a voting change violates Section 5, and thus MALC is precluded from alleging that the plans are discriminatory under Section 5 in its action in the Texas district court.

Thus, Applicant's interests with regard to the subject redistricting plans may be impaired or impeded by this action should preclearance be granted.

4. The existing parties do not adequately represent the interests of the Applicant.

The final prong of Rule 24(a)(2)'s test requires Applicant to meet the minimal burden of showing that existing representation "may be" inadequate to protect their interest. *Natural Res. Def. Council v. Costle*, 561 F.2d at 911 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)).

The Attorney General – the statutory defendant in a Section 5 declaratory judgment action – represents the interests of the federal government and the public at large. However, courts in this Circuit have "often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals*, 322 F.3d at 736; *see also id*. at 736 n.9 (citing cases); *Dimond v. Dist. of Columbia*, 792 F.2d 179, 193 (D.C. Cir. 1986); *Smuck v. Hobson*, 408 F.2d 175, 181 (D.C. Cir. 1969).[1]

[1] For instance, in *Costle*, the D.C. Circuit held that the EPA could not be found to represent adequately the NRDC's interests despite the fact that both shared a "general agreement . . . that the [challenged] regulations should be lawful." 561 F.2d at 912. That general agreement, the court held:

The same rationale undoubtedly applies here. Applicant may well have a different perspective than Defendants regarding the application of Section 5 to the voting changes at issue. *See Georgia v. Ashcroft*, 195 F. Supp. 2d 25, 72-73 (permitting defendant-intervenors to challenge preclearance of statewide redistricting plans notwithstanding the Attorney General's non-opposition to preclearance).[2]

Moreover, even to the extent that the interests of MALC and the Defendants may be expected to coincide, MALC includes residents and voters of Texas protected by the provisions of Section 5 of the Voting Rights Act, who were directly involved in the consideration of the instant legislative enactments, and is therefore in a unique position to ensure that the Court is fully apprised of the facts and circumstances relevant MALC's interests and to the litigation in general. *See, e.g., Georgia v. Ashcroft*, 539 U.S. at 477 (upholding D.C. District Court's grant of private parties' motion to intervene where intervenors' interests were not adequately represented by the existing parties); *County Council of Sumter County*, 555 F. Supp. at 696-97 & n.2

> does not necessarily ensure agreement in all particular respects about what the law requires. Without calling the good faith of EPA into question in any way, appellants may well have honest disagreements with EPA on legal and factual matters. . . . Good faith disagreement, such as this, may understandably arise out of the differing scope of EPA and appellants' interests: EPA is broadly concerned with implementation and enforcement of the settlement agreement, appellants are more narrowly focused on the proceedings that may affect their industries. Particular interests, then, always "*may* not coincide," thus justifying separate representation.

Id. (quoting *Nuesse v. Camp*, 385 F.2d 694, 703 (D.C. Cir. 1967) (footnote omitted)).

[2] There are multiple additional instances in which intervention by private citizens in cases brought under the Voting Rights Act has been particularly valuable because of different legal positions taken by the United States and the intervening minority voters. *See, E.g., Young v. Fordice*, 520 U.S. 273, 281 (1997) (private plaintiffs challenged certain changes to Mississippi's voter registration procedures and won reversal of lower court's decision, although United States opted not to appeal); *Blanding v. DuBose*, 454 U.S. 393, 398 (1982) (minority plaintiffs appealed and prevailed in the Supreme Court in voting rights suit after United States dropped out); *City of Lockhart v. United States*, 460 U.S. 125, 129-30 (1983) (defendant-intervenor presented sole argument in the Supreme Court regarding the scope of Section 5 of the VRA while the United States stood in support of appellant); *County Council of Sumter County*, 555 F. Supp. at 696 (minority intervenors and United States took conflicting positions regarding application of Section 2 to Section 5 preclearance process).

(permitting intervention in light of African-American intervenors' local perspective and noting possibility of inadequate representation by United States). *See also Nat. Res. Def. Council v. Costle*, 561 F.2d at 912-13 (intervention as of right granted to the environmental group NRDC; NRDC's "more narrow and focused [sic]" interest would "serve as a vigorous and helpful supplement to EPA's defense" and, "on the basis of their experience and expertise in their relevant fields, appellants can reasonably be expected to contribute to the informed resolutions of . . . questions when, and if, they arise.").

5. Applicant satisfies the requirements of Article III standing.

Because MALC satisfies the requirements for intervention of right under of Rule 24(a), it satisfies any applicable standing requirements. As previously noted, the D.C. Circuit has held that "any person who satisfies Rule 24(a) will also meet Article III's standing requirement." *Roeder v. Islamic Republic of Iran*, 333 F.3d at 233.[3] Moreover, as discussed above, MALC's members face imminent injury resulting from Texas' adoption of the instant redistricting plans, the interests that MALC seeks to protect are germane to MALC's purpose, and defense of this suit will not require any special participation by MALC' members.

C. In the Alternative, This Court Should Grant Permissive Intervention Under Rule 24(b)(1)

Even if MALC is not granted intervention of right, this Court should exercise its discretion to grant permissive intervention pursuant to Fed. R. Civ. P. 24(b)(1), which permits

[3] MALC has Article III standing to represent the interests of its members under *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (requiring showing of injury-in-fact, causation and redressibility), and *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977) (organization has standing to sue on behalf of its members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.")

intervention "upon timely application" when an applicant "has a claim or defense that shares with the main action a common question of law or fact."

Applicant satisfies the requirements of Rule 24(b)(1). Applicant's perspective on certain factual and legal issues will assuredly be distinct, but the fundamental questions of law and fact which MALC seeks to litigate in this action are no different from the questions already presented by Texas' lawsuit. MALC contends that the redistricting plans that Texas has put at issue in this case will result in a retrogression of Latino voting strength and were adopted pursuant to a discriminatory intent, the precise issues presented by Texas' Complaint. *See, e.g., Miller v. Silbermann*, 832 F. Supp. 663, 673-74 (S.D.N.Y. 1993) (allowing permissive intervention where intervenors' defense "raises the same legal questions as the defense of the named defendants").

Permissive intervention is particularly warranted where, as here, MALC's unique knowledge and experiences may help contribute to the proper development of the factual issues in the litigation. *See, e.g., Johnson v. Mortham*, 915 F. Supp. 1529, 1538-39 (N.D. Fla. 1995) (holding that the NAACP should be permitted to intervene because the organization's unique perspective and expertise would aid the court's constitutional inquiry); *see also Miller*, 832 F. Supp. at 674 (permitting intervention where applicant's "knowledge and concern" would "greatly contribute to the court's understanding").

Finally, granting MALC's motion to intervene at this stage would not delay or prejudice the adjudication of the rights of the original parties. Fed. R. Civ. P. 24(b). As noted, Defendants have not yet filed their Answer, and this Court has not conducted or scheduled a hearing, or issued a case management order. Consequently, granting MALC's motion would not delay this litigation. Moreover, neither Plaintiff nor Defendants can plausibly claim prejudice as a result of this Court's permitting intervention; Applicant does not propose to add a counterclaim, expand

the questions presented by the Complaint, or raise any additional affirmative defenses. Rather, Applicant's participation will enhance the Court's understanding of the factual and legal context necessary to properly dispose of the merits of this case.

Conclusion

For the above and foregoing reasons, the Court should permit the Applicant-organization to intervene in this action as a party defendant.

Dated: August 17, 2011

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
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STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA; ERIC H. HOLDER, JR., in his official capacity as Attorney General Defendants, and SENATOR WENDY DAVIS, REPRESENTATIVE MARC VEASEY JOHN JENKINS, VICKI BARGAS, and ROMEO MUÑOZ, Defendant-Intervenors, and MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES (MALC), Proposed Defendant-Intervenor.	)	No. 1:11-cv-01303 (RMC-TBG-BAH) [Three Judge Court]

PROPOSED ANSWER OF DEFENDANT-INTERVENOR MALC

NOW COMES the MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES (MALC), Defendant-Intervenor in the above-captioned action, and answers Plaintiff's Complaint as follows:

Answers to Allegations

1. Intervenor admits the allegations in paragraph 1 of the complaint.

2. Intervenor admits the allegations in paragraph 2 of the complaint.

3. Intervenor admits the allegations in paragraph 3 of the complaint, but denies that this Court should declare Plaintiff's redistricting plans compliant with Section 5.

4. Intervenor admits the allegations of paragraph 4 of the complaint.

5. Intervenor admits the allegations of paragraph 5 of the complaint.

6. Intervenor admits the allegations of paragraph 6 of the complaint.

7. Intervenor admits the allegations of paragraph 7 of the complaint.

8. Intervenor admits the allegations of paragraph 8 of the complaint.

9. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in paragraph 9 of the complaint and therefore denies the same.

10. Intervenor admits the allegations of paragraph 10 of the complaint.

11. Intervenor admits the allegations of paragraph 11 of the complaint.

12. Intervenor admits that SBOE Plan, H.B. 600, was passed by the Legislature on May 6, 2011 and became effective under state law on May 18, 2011, and that maps of the former and new districts are attached to the Complaint. Intervenor denies that SBOE Plan, H.B. 600, will become effective on August 29, 2011 since it is not now, and will not be, effective pursuant to federal law. SBOE Plan, H.B. 600, is legally unenforceable as law unless and until preclearance is obtained under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

13. Intervenor admits that plaintiff has provided documents and data relating to the SBOE Plan to the Department of Justice, and otherwise is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in paragraph 13 of the

complaint and therefore denies the same.

14. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in paragraph 14 of the complaint and therefore denies the same.

15. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in paragraph 15 of the complaint and therefore denies the same.

16. Intervenor admits the allegations of paragraph 16 of the complaint.

17. Intervenor admits the allegations of paragraph 17 of the complaint.

18. Intervenor admits that House Plan, H.B. 150, was passed by the Legislature on May 23, 2011 and became effective under state law on June 17, 2011, and that maps of the former and new districts are attached to the Complaint. Intervenor denies that House Plan, H.B. 150, has become effective pursuant to federal law. House Plan, H.B. 150 is legally unenforceable as law unless and until preclearance is obtained under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

19. Intervenor denies the allegations of paragraph 19 of the complaint. State House Plan, H.B. 150, is legally unenforceable as law unless and until preclearance is obtained under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

20. Intervenor admits that plaintiff has provided documents and data relating to the House Plan to the Department of Justice, and otherwise denies the allegations of paragraph 20 of the complaint.

21. Intervenor denies the allegations of paragraph 21of the complaint.

22. Intervenor denies the allegations of paragraph 22 of the complaint.

23. Intervenor admits the allegations of paragraph 23 of the complaint.

24. Intervenor admits the allegations of paragraph 24 of the complaint.

25. Intervenor admits that Senate Plan, S.B. 31, was passed by the Legislature on May 23, 2011 and became effective under state law on June 17, 2011, and that maps of the former and new districts are attached to the complaint. Intervenor denies that Senate Plan, S.B. 31, has become effective pursuant to federal law. Senate Plan, S.B. 31 is legally unenforceable as law unless and until preclearance is obtained under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

26. Intervenor denies the allegations of paragraph 26 of the complaint. Senate Plan, S.B. 31 is legally unenforceable as law unless and until preclearance is obtained under Section 5 of the Voting Rights Act.

27. Intervenor admits that plaintiff has provided documents and data relating to the Senate Plan to the Department of Justice, and otherwise denies the allegations of paragraph 27 of the complaint.

28. Intervenor denies the allegations of paragraph 28 of the complaint.

29. Intervenor denies the allegations of paragraph 29 of the complaint.

30. Intervenor admits the allegations of paragraph 30 of the complaint.

31. Intervenor admits the allegations of paragraph 31 of the complaint.

32. Intervenor admits the allegations of paragraph 32 of the complaint.

33. Intervenor admits that during a special session of the Texas State Legislature convened on May 31, 2011, the Legislature passed Congressional Plan, S.B. 4, on June 24, 2011, and the plan became effective under state law on July 18, 2011, and that maps showing the former and new districts are attached to the complaint. Intervenor denies that Congressional Plan, S.B. 4, has become effective pursuant to federal law. Congressional Plan, S.B. 4 is legally unenforceable as law unless and until preclearance is obtained under Section 5 of the Voting

Rights Act, 42 U.S.C. § 1973c.

34. Intervenor admits that plaintiff has provided documents and data relating to the Congressional Plan to the Department of Justice, and otherwise denies the allegations of paragraph 34 of the complaint.

35. Intervenor denies the allegations of paragraph 35 of the complaint.

36. Intervenor denies the allegations of paragraph 36 of the complaint.

37. Intervenor denies the allegations of paragraph 37 of the complaint.

38. This paragraph contains no factual allegations and requires no response. To the extent that there are any factual allegations contained in paragraph 38 of the complaint, Intervenor denies the allegations of paragraph 38 of the complaint.

39. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in paragraph 39 of the complaint and therefore denies the same.

40. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in paragraph 40 of the complaint and therefore denies the same.

41. This paragraph contains no factual allegations and requires no response. To the extent that there are any factual allegations contained in paragraph 41 of the complaint, Intervenor denies the allegations of paragraph 41 of the complaint.

42. Intervenor denies the allegations of paragraph 42 of the complaint.

43. Intervenor denies the allegations of paragraph 43 of the complaint.

44. This paragraph contains no factual allegations and requires no response. To the extent that there are any factual allegations contained in paragraph 44 of the complaint, Intervenor denies the allegations of paragraph 44 of the complaint.

45. Intervenor denies the allegations of paragraph 45 of the complaint.

46. Intervenor denies the allegations of paragraph 46 of the complaint.

47. This paragraph contains no factual allegations and requires no response. To the extent that there are any factual allegations contained in paragraph 47 of the complaint, Intervenor denies the allegations of paragraph 47 of the complaint.

48. Intervenor denies the allegations of paragraph 48 of the complaint.

49. Intervenor denies the allegations of paragraph 49 of the complaint.

Defendant-Intervenor Prayer for Relief

Defendant-Intervenor requests that this Court grant the following relief:

a. Deny the State of Texas a declaratory judgment stating that the State of Texas has demonstrated that SBOE - H.B. 600, House Plan - H.B. 150, Senate Plan - S.B. 31 and that Congressional Plan – S.B. 4, neither have a discriminatory effect on racial and ethnic minority voters nor were not adopted pursuant to a discriminatory purpose, as required by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c;

b. To the extent authorized by federal law, grant Defendant-Intervenor any temporary, preliminary or permanent injunctive relief to enforce Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c;

c. Grant Defendant-Intervenor a reasonable award of attorney's fees, litigation expenses, including expert witness fees and expenses, and costs;

d. Grant Defendant-Intervenor such other relief that may be necessary and proper as the needs of justice may require.

Dated: August 17, 2011

Respectfully submitted,

s/ Mark A. Posner
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Robert A. Kengle
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA; ERIC H. HOLDER, JR., in his official capacity as Attorney General Defendant, and SENATOR WENDY DAVIS, REPRESENTATIVE MARC VEASEY JOHN JENKINS, VICKI BARGAS, and ROMEO MUÑOZ, Defendant-Intervenors, and MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES (MALC), Proposed Defendant-Intervenor.	No. 1:11-cv-01303 (RMC-TBG-BAH) [Three Judge Court]

APPLICANT MALC'S CERTIFICATE REQUIRED BY LOCAL RULE 7.1 OF THE DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

I, the undersigned, as counsel of record for intervenor Applicant MALC, certify that to the best of my knowledge and belief there are no parent companies, subsidiaries, or affiliates which have any outstanding securities in the hands of the public.

This representation is being made in order that the Judges of this Court may determine any need for recusal.

Dated: August 17, 2011

Respectfully submitted,

s/ Mark A. Posner
Jon Greenbaum (D.C. Bar No. 489887)
Robert A. Kengle
Mark A. Posner (D.C. Bar No. 457833)
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA; ERIC H. HOLDER, JR., in his official capacity as Attorney General Defendant, and SENATOR WENDY DAVIS, REPRESENTATIVE MARC VEASEY JOHN JENKINS, VICKI BARGAS, and ROMEO MUÑOZ, Defendant-Intervenors, and MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES (MALC), Proposed Defendant-Intervenor.	)	No. 1:11-cv-01303 (RMC-TBG-BAH) [Three Judge Court]

PROPOSED ORDER

This matter is before the Court on motion by the Mexican American Legislative Caucus, Texas House of Representatives (MALC) for leave to intervene as a defendant.

Having reviewed the motion as well as the memorandum of points of authorities in support of the motion, and the positions of the parties, the Court finds that the applicant meets the requirements for intervention under Rule 24 of the Federal Rules of Civil Procedure.

Accordingly, it is ORDERED that MALC's motion to intervene is GRANTED, and it is given leave to participate as a party to this action as an Intervenor-Defendant.

The Clerk of the Court is directed to file the Answer of Intervenor-Defendant MALC and to forward a copy of this Order to all Counsel of record in this action.

_____
Date

_____
THOMAS B. GRIFFITH
United States Circuit Judge

_____
ROSEMARY M. COLLYER
United States District Judge

_____
BERYL A. HOWELL
United States District Judge