No. 14-5151

In the
United States Court of Appeals
for the District of Columbia Circuit

STATE OF TEXAS,
Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA; ERIC H. HOLDER, JR., in his official capacity as Attorney General of the United States,
Defendants,

WENDY DAVIS; MARC VEASEY; JOHN JENKINS; VICKI BARGAS; ROMEO MUÑOZ; GREG GONZALES; LISA AGUILAR; DANIEL LUCIO; VICTOR GARZA; BLANCA GARCIA; JOSEPHINE MARTINEZ; KATRINA TORRES; NINA JO BAKER; TEXAS STATE CONFERENCE OF NAACP BRANCHES; JUANITA WALLACE; BILL LAWSON; HOWARD JEFFERSON; ERICKA CAIN; NELSON LINDER; REGINALD LILLIE
Intervenors for Defendants-Appellees

On Appeal from the United States District Court
for the District of Columbia

THE STATE OF TEXAS'S NONBINDING STATEMENT OF ISSUES

Appellant, the State of Texas, submits the following nonbinding statement of issues for this appeal.

When the Texas Legislature enacted legislation drawing the congressional and legislative districts following the 2010 census, Texas was a covered jurisdiction required to obtain preclearance before implementing the districting plans. Texas filed a preclearance lawsuit against the United States, and numerous private parties intervened. A three-judge district court denied preclearance, and while Texas's direct appeal was pending, the Supreme Court struck down the

coverage formula by which jurisdictions had been subjected to the preclearance requirements. The Supreme Court explained that the "extraordinary departure" from traditional federalism principles embodied in the preclearance framework imposed costs upon the States that the Constitution no longer permitted. *Shelby County v. Holder*, 133 S. Ct. 2612, 2624, 2627 (2013); *id*. at 2621 (noting the "substantial federalism costs" of imposing preclearance burdens on the States). The Supreme Court then vacated the district court's judgment denying preclearance to Texas's districting plans and remanded this case. *Texas v. United States*, 133 S. Ct. 2885 (2013) (mem.).

On remand, Texas moved to dismiss its claims as moot on one ground: because "Texas is no longer subject to preclearance." Plaintiff's Motion to Dismiss at 1 (1:11-cv-01303, July 3, 2013). The three-judge district court granted the motion on that basis, recognizing that "[t]he decision in *Shelby County* dismantled the legal framework that called for preclearance of Texas's redistricting plans in the first place. *That alone rendered Texas's claim for declaratory relief moot*." Memorandum and Order at 4 (1:11-cv-01303, Dec. 3, 2013) (emphasis added). None of the private-party intervenors appealed this final judgment.

Some, but not all, of the intervenors subsequently sought attorneys' fees for their participation in the since-nullified preclearance suit. Texas filed an advisory explaining that "these proceedings have already posed significant unconstitutional

burdens" on the State and urging that the intervenors should not be permitted to exacerbate those burdens "by seeking payment from the State of Texas for their voluntary participation in a proceeding that never should have been held in the first place." Advisory at 2 (1:11-cv-01303, Dec. 20, 2013). Responding to lengthy, detailed fee requests would have required the use of significant state resources that could not be recovered (and was contrary to the Supreme Court's admonition that the imposition of burdens associated with the then-existing preclearance regime was unconstitutional), so the State sought to minimize any additional burdens that intervenors could impose through this litigation. But the State also made clear that it would provide a full response to the intervenors' fee claims "if requested to do so by the Court." *Id.* at 3. The three-judge district court remanded the case to a single judge, Order (1:11-cv-01303, Jan. 22, 2014), who awarded fees based upon the single judge's implicit modification of the three-judge district court's final judgment, *e.g.*, Opinion at 6 (1:11-cv-01303, June 18, 2014) (claiming that "*both Shelby County* and Texas's enactment of new districting plans" mooted Texas's claim) (emphasis added); *id.* at 13, 14 16, 17 (basing the award of fees upon arguments that *Shelby County* alone did not moot this lawsuit).

At this preliminary stage, the State of Texas notifies the Court and the parties of the following issues on appeal:

1. Whether *Shelby County v. Holder* forecloses imposing attorneys' fees against Texas for intervenors' voluntary participation in a lawsuit, the mere existence of which placed unconstitutional burdens upon the State.

2. Whether a single judge has the power to amend the final judgment of a three-judge district court after the time for appealing that final judgment has passed.

3. If *Shelby County* and the three-judge district court's final judgment do not expressly and absolutely foreclose the fee award, did the district court nevertheless abuse its discretion by awarding fees without requesting a response from Texas given the State's reasonable interest in avoiding additional unconstitutional burdens caused by the nullified preclearance regime and the State's expressed willingness to respond fully to the fee claims upon request.

Texas reserves the right to raise any other issues that have been preserved for appellate review.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that on July 28, 2014, the above and foregoing document was served, via the Court's CM/ECF Document Filing System, https://ecf.cadc.uscourts.gov/, upon the following registered CM/ECF users:

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