IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHELBY COUNTY, ALABAMA, Plaintiff, v. ERIC H. HOLDER, JR., in his official capacity as ATTORNEY GENERAL OF THE UNITED STATES, Defendant.	Civil Action No. 1:10-cv-00651-JDB

ATTORNEY GENERAL'S CONSOLIDATED RESPONSE TO MOTIONS TO INTERVENE

Defendant Attorney General of the United States (the "Attorney General") respectfully responds to the motions to intervene as defendants filed by (1) Earl Cunningham, Harry Jones, Albert Jones, Ernest Montgomery, Anthony Vines, and William Walker (Docket #6); and (2) Bobby Pierson, Willie Goldsmith, Sr., Mary Paxton-Lee, Kenneth Dukes, and the Alabama State Conference of the National Association for the Advancement of Colored People, Inc. (Docket #9) (collectively "movant-intervenors"). Movant-intervenors are residents and registered voters of Shelby County, Alabama, as well as a local civil rights organization. Movant-intervenors seek permissive intervention under Rule 24(b)(1) and intervention of right under Rule 24(a) of the Federal Rules of Civil Procedure.

Consistent with his longstanding position in Voting Rights Act cases before this Court, the Attorney General does not oppose permissive intervention under Rule 24(b)(1), but submits that the conditions are not met for intervention of right under Rule 24(a).

Rule 24 Intervention Standard

Movant-intervenors seek to intervene as defendants to this action under Rule 24. Rule 24 provides two ways to intervene as a party to litigation:

> (a) Intervention of Right. On timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute; or (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.
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> (b) Permissive Intervention. (1) In General. On timely motion, the court may permit anyone to intervene who: (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact.

Fed. R. Civ. P. 24. Rule 24 "governs intervention" in this case. *Georgia v. Ashcroft*, 539 U.S. 461, 476-77 (2003).

Intervention Under Rule 24(b)

Movant-intervenors argue that they are eligible for permissive intervention as defendants under Rule 24(b)(1). Rule 24(b)(1) gives this Court discretion to grant permissive intervention. The Attorney General does not oppose permissive intervention pursuant to Rule 24(b)(1).

This Court has "routinely allowed intervention by persons situated similarly" to these movant-intervenors in declaratory judgment actions brought by covered jurisdictions against the

Attorney General as the statutory defendant under the Voting Rights Act.[1] *County Council of Sumter County v. United States*, 555 F. Supp. 694, 696 (D.D.C. 1983). As residents of Alabama, the movant-intervenors possess relevant knowledge and a "local perspective on the current and historical facts," *id*. at 697, that will arise in this litigation.

Intervention Under Rule 24(a)

Movant-intervenors argue that they are eligible to intervene as defendants under Rule 24(a), which provides intervention of right under two circumstances.

First, Rule 24(a)(1) provides for intervention of right when intervention is expressly provided by a federal statute. No federal statute confers the right to intervene here. While

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[1] *See, e.g., Nw. Austin Mun. Utility Dist. No. One v. Gonzales*, 573 F. Supp. 2d 221, 230 (D.D.C. 2008), *reversed and remanded on other grounds*, 129 S. Ct. 2504 (2009); *North Carolina State Bd. of Elections v. United States*, No. 02-1174, Order of June 25, 2002 (D.D.C.); *Louisiana House of Representatives v. Ashcroft*, No. 02-0062, Order of June 6, 2002 (D.D.C.); *Florida v. United States*, No. 02-0941, Order of May 28, 2002 (D.D.C.); *Georgia v. Ashcroft*, 195 F. Supp. 2d 25, 32 (D.D.C. 2002), *aff'd in relevant part and vacated on other grounds*, 539 U.S. 461, 476-77 (2003); *Virginia v. Reno*, 117 F. Supp. 2d 46 (D.D.C. 2000); *Castro County v. Crespin*, 101 F.3d 121 (D.C. Cir. 1996); *Bossier Parish School Bd. v. Reno*, 157 F.R.D. 133 (D.D.C. 1994); *Texas v. United States*, 866 F. Supp. 20, 21 (D.D.C. 1994); *Lee County v. United States*, No. 93-708, 1994 WL 238848 (D.D.C. May 18, 1994); *Texas v. United States*, 802 F. Supp. 481, 482 n.1 (D.D.C. 1992); *Mississippi v. United States*, No. 87-3464, 1988 WL 58904 (D.D.C. May 20, 1988); *South Carolina v. United States*, 589 F. Supp. 757, 758 (D.D.C. 1984); *City of Lockhart v. United States*, 460 U.S. 125, 129 (1983); *Comm'rs Court of Medina County v. United States*, 683 F.2d 435, 438 (D.C. Cir. 1982), *appeal after remand*, 719 F.2d 1179 (D.C. Cir. 1983); *Donnell v. United States*, 682 F.2d 240, 244 (D.C. Cir. 1982); *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982), *aff'd on other grounds*, 459 U.S. 1166 (1983); *City of Port Arthur v. United States*, 517 F. Supp. 987, 991 n. 2 (D.D.C. 1981), *aff'd on other grounds*, 459 U.S. 159 (1982); *Mississippi v. United States*, 490 F. Supp. 569, 574 (D.D.C. 1979), *aff'd on other grounds*, 444 U.S. 1050 (1980); *City of Dallas v. United States*, 482 F. Supp. 183, 184 (D.D.C. 1979); *Virginia v. United States*, 386 F. Supp. 1319, 1321 (D.D.C. 1974), *aff'd on other grounds*, 420 U.S. 901 (1975); *City of Richmond v. United States*, 376 F. Supp. 1344, 1349 n. 23 (D.D.C. 1974), *vacated on other grounds*, 422 U.S. 358 (1975); *New York v. United States*, 65 F.R.D. 10 (D.D.C. 1974); *Beer v. United States*, 374 F. Supp. 363, 367 n. 5 (D.D.C. 1974), *vacated on other grounds*, 425 U.S. 130, 133 n.3 (1976); *City of Petersburg v. United States*, 354 F. Supp. 1021, 1024 (D.D.C.1972), *aff'd*, 410 U.S. 962 & *aff'd sub nom. Diamond v. United States*, 412 U.S. 901 (1973). The unpublished orders cited above are attached as part of Exhibit 1.

Section 4(a)(4) of the Voting Rights Act, 42 U.S.C. § 1973b(a)(4), does provide the right to intervene in statutory bailout proceedings, Shelby County's claim is a constitutional one.

Second, Rule 24(a)(2) provides for intervention of right when movants have certain interests in the litigation at issue and when the movants' interests are not already adequately represented by the existing parties to the litigation. However, there is no indication that the Attorney General will not properly carry out his responsibility to defend this lawsuit. Under the Voting Rights Act, the Attorney General is charged with protecting the public interest in eradicating racial discrimination in voting. To that end, the Attorney General administers the Section 5 preclearance process, brings affirmative suits to enforce the Act, and serves as the statutory defendant in cases brought in this Court regarding the Act. *See, e.g.*, 42 U.S.C. §§ 1973b(a), 1973c, 1973j(d), 1973*l*(b). Likewise, the Attorney General is charged by statute to defend the constitutionality of all Acts of Congress. 28 U.S.C. § 2403(a).

While this Court has, in some limited instances, granted intervention of right under Rule 24(a)(2),[2] the majority of instances where this Court has granted intervention in Voting Rights Act cases have been either permissively under Rule 24(b)(1) or silent about the basis for intervention.[3] Because permissive intervention is available, this Court need not grapple with the

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[2] *N.C. State Bd. of Elections v. United States*, No. 02-1174, Order of June 25, 2002 (D.D.C.); *Florida v. United States*, No. 02-0941, Orders of May 28 and June 4, 2002 (D.D.C.); *Georgia v. Ashcroft*, No. 01-2111, Orders of Jan. 10 and 30, 2002 (D.D.C.), *aff'd in relevant part and vacated on other grounds*, 539 U.S. 461, 476-77 (2003). These unpublished Orders are attached as part of Exhibit 1. The Georgia and North Carolina cases involved a demonstrated distance between the positions taken by the Attorney General and the movants there. The Florida case was a fast-moving redistricting case in which this Court granted intervention prior to a response by the Attorney General.

[3] *See, e.g., Nw. Austin Mun. Utility Dist. No. One v. Gonzales*, No. 06-1384, Orders of Nov. 9, 2006, Nov. 15, 2006, Nov. 17, 2006, Mar. 26, 2007 (D.D.C.) (silent); *Virginia v. Reno*, No. 00-0751, Orders of July 14, 2000 and Sep. 1, 2000 (D.D.C.) (permissive); *Bossier Parish School Bd. v. Reno*, 157 F.R.D. 133 (D.D.C. 1994) (permissive); *Texas v. United States*, 802 F.

question of whether the Attorney General adequately represents the interests of the movant-intervenors.

Conclusion

The Attorney General does not oppose permissive intervention under Rule 24(b)(1). Because there is no statute that confers a right to intervene, and because there is no indication that the Attorney General will not adequately represent the interests of movant-intervenors in this litigation, the conditions are not met for intervention as of right under Rules 24(a)(1) or 24(a)(2).

Supp. 481, 482 n.1 (D.D.C. 1992) (permissive); *Mississippi v. United States*, No. 87-3464, 1988 WL 58904 (D.D.C. May 20, 1988) (permissive); *City of Lockhart v. United States*, 460 U.S. 125, 129 (1983) (silent). The unpublished orders cited above are attached as part of Exhibit 1.

Date: June 24, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2010, I served a true and correct copy of the foregoing via the Court's ECF filing system to the following counsel of record:

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