IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF FLORIDA *Plaintiff,* v. UNITED STATES OF AMERICA and ERIC H. HOLDER, JR., in his official capacity as Attorney General of the United States *Defendants,* FLORIDA STATE CONFERENCE OF THE NAACP, BELINTHIA BERRY, SHARON CARTER, ELLA KATE COFFEE, HOWARD HARRIS, DIANNE HART, YVETTE LEWIS, MARVIN MARTIN, CHARLES MCKENZIE, JR., EARL RUTLEDGE, ALONDA VAUGHAN, AND PAULETTE WALKER *Applicants for Intervention.*	Civ. No. 1:11-cv-01428-CKK-MG-ESH

MOTION TO INTERVENE AS DEFENDANTS

Proposed Defendant-Intervenors Florida State Conference of the NAACP, Belinthia Berry, Sharon Carter, Ella Kate Coffee, Howard Harris, Dianne Hart, Yvette Lewis, Marvin Martin, Charles McKenzie, Jr., Earl Rutledge, Alonda Vaughan, and Paulette Walker (collectively, "Proposed Defendant-Intervenors"), by their undersigned counsel, hereby submit this Motion to Intervene as of right pursuant to Fed. R. Civ. P. 24(a)(2), the accompanying Statement of Points and Authorities, and Answer in accordance with Local Civil Rule 7(j). In the alternative, Proposed Defendant-Intervenors seek permissive intervention pursuant to Fed. R. Civ. P. 24(b)(1). Proposed

Defendant-Intervenors seek to intervene in this action to challenge the preclearance under Section 5 of the Voting Rights Act ("VRA") of proposed discriminatory voting changes submitted by the State of Florida.

Proposed Defendant-Intervenors recognize this Court's interest in the efficient conduct of future proceedings in this matter. Thus, if intervention is granted, Proposed Defendant-Intervenors will (i) avoid unnecessary delays and duplication of efforts in areas satisfactorily addressed and represented by the existing Defendants; and (ii) coordinate all future proceedings in this action with the existing parties, to the extent possible. Proposed Defendant-Intervenors will also coordinate their efforts to the fullest extent possible consistent with their respective duties and ethical obligations to their respective clients.

Proposed Individual Intervenors Belinthia Berry, Sharon Carter, Ella Kate Coffee, Howard Harris, Dianne Hart, Yvette Lewis, Marvin Martin, Charles McKenzie, Jr., Earl Rutledge, Alonda Vaughan, and Paulette Walker (collectively, "Proposed Individual Intervenors") are African-American residents of Hillsborough County, a jurisdiction covered by Section 5 of the Voting Rights Act, and registered voters of Florida. Proposed Individual Intervenors Berry, Carter, Coffee, Harris, Hart, Lewis, Martin, McKenzie, Vaughan, and Walker have relied on one or more of the benchmark practices at issue in this litigation, including the benchmark practice with respect to early voting during the 2008 and/or 2010 general elections.

Proposed Organizational Intervenor Florida State Conference of the NAACP ("Florida NAACP") is a nonprofit, nonpartisan organization in Florida. The NAACP was formed in 1909, and seeks to remove all barriers of racial discrimination through democratic processes and through the enactment and enforcement of federal, state and local laws securing civil rights, including laws

relating to voting rights. Its members are predominantly African-American and other minority residents of Florida and includes members who reside in each of the five counties in Florida that are covered by Section 5 of the Voting Rights Act. Proposed Individual Intervenors Coffee, Lewis, and Vaughan are members of the Florida NAACP. The Florida NAACP also has branch units throughout Florida, including branch units that are located in or that cover each of the five counties in Florida that are covered by Section 5 of the Voting Rights Act. The Florida NAACP has held and sponsored voter registration and voter education activities for several years, and has been credited with registering thousands of voters in the state. Proposed Intervenor Florida NAACP's members have relied on the benchmark practices at issue in this litigation, including the benchmark practice with respect to early voting. Moreover, the Florida NAACP has itself relied on the benchmark practice with respect to voter registration drives. Thus, the Florida NAACP seeks to intervene in this litigation on behalf of itself as an organization, and as a representative of its members.

Proposed Defendant-Intervenors are dedicated to vigorously defending the voting rights of African-American residents and registered voters in Florida. The VRA is an essential piece of federal legislation that safeguards the voting rights of African Americans and other racial minorities in Florida. Proposed Defendant-Intervenors assert that their intervention is necessary to ensure the robust enforcement of Section 5 of the VRA in this case.

The grounds for this Motion, more fully described in the accompanying Statement of Points and Authorities, are set forth below:

1. Plaintiff brought this declaratory judgment action under Section 5 of the VRA, as amended, 42 U.S.C. § 1973c, to seek judicial preclearance of various provisions of an omnibus election bill affecting, *inter alia*, voter registration, early voting, election-day change of address

processes, and constitutional amendments proposed by ballot initiative, even though implementing these measures would have a retrogressive effect on minority voters in Florida counties covered by Section 5.

2. Plaintiff filed its complaint on July 29, 2011. This Motion to Intervene is made before (1) Defendants have filed their Answer; (2) the issuance of a scheduling order: (3) commencement of the discovery period, and (4) any other deadline set forth by this Court. Therefore, this Motion to Intervene is timely. Moreover, intervention at this early stage of the litigation will not unduly delay or prejudice the adjudication of any rights of the original parties.

3. Proposed Defendant-Intervenors are the Florida NAACP, and eleven individual African-American registered voters who reside in Florida counties covered by Section 5. Proposed Individual Intervenors as well as members of the Florida NAACP are all members of the class of persons the VRA was specifically designed to protect.

4. Proposed Defendant-Intervenors have direct, substantial and legally protectable interests in this action. The questions of law and fact concerning the legality of the proposed voting changes directly impact the current and future rights of Proposed Defendant-Intervenors.

5. Proposed Defendant-Intervenors have a significant interest in preventing the implementation of discriminatory voting changes, such as the ones that the State of Florida is attempting to implement here. As a plurality of the United States Supreme Court observed: "[s]till, racial discrimination and racially polarized voting are not ancient history. Much remains to be done to ensure that citizens of all races have equal opportunity to share and participate in our democratic processes and traditions. . . ." *Bartlett v. Strickland*, 129 S. Ct. 1231, 1249 (2009) (Kennedy, J.). The Supreme Court also recognized that the VRA remains an effective tool in safeguarding the rights of minority voters. *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct. 2504, 2506

(2009) (noting that the "improvements are no doubt due in significant part to the Voting Rights Act itself, and stand as a monument to its success").

6. The disposition of this case could impair Proposed Defendant-Intervenors' interest in maintaining voter registration, early voting, and election-day change of address processes in the State of Florida that are free from discriminatory practices. Proposed Individual Intervenors, as African-American voters in Florida counties covered by Section 5, have previously relied on the state's benchmark practices, including the benchmark practice with respect to early voting. Proposed Organizational Intervenor Florida NAACP's members have relied on the state's benchmark practices, and the Florida NAACP has itself relied on the state's benchmark practice with respect to voter registration drives. As such, Proposed Defendant-Intervenors have a distinct interest in the outcome of this case.

7. This Court and others have recognized the significant impact of voting rights cases on the exercise of fundamental rights and routinely grant intervention to minority voters in such cases, including declaratory judgment actions and enforcement suits. *See, e.g.*, *Texas v. United States*, No. 1:11-cv-01303, ECF No. 11 (D.D.C. Aug. 16, 2011) (granting intervention to minority voters in declaratory judgment action to preclear redistricting plan under Section 5); *Georgia v. Holder*, No. 1:10-cv-01062, ECF No. 30 (D.D.C. Aug. 3, 2010) (granting intervention in declaratory judgment action to preclear voting changes under Section 5); *Nw. Austin Mun. Util. Dist. No. One v. Mukasey*, 573 F. Supp. 2d 221, 230 (D.D.C. 2008) (granting multiple motions to intervene presented by African-American, Latino and other minority voters in case seeking bailout under section 4(a) of the VRA and challenging the constitutionality of section 5 of the VRA); *Georgia v. Ashcroft*, 539 U.S. 461 (2003) (upholding D.C. District Court's grant of private parties' motion to intervene on grounds that intervenors' interests were not adequately represented by the existing parties); *La.*

House of Representatives v. Ashcroft, No. 1:02-cv-00062, ECF No. 33 (D.D.C. June 6, 2002) (granting coalition of African-American and other voters' motion to intervene in a Section 5 declaratory judgment action seeking preclearance of redistricting plan where constitutional claims were asserted); *cf. Bossier Parish Sch. Bd. v. Reno*, 907 F. Supp. 434 (D.D.C. 1995) (making extensive reference to arguments presented by Defendant Intervenors, African-American voters, in Section 5 declaratory judgment action); *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982) (recognizing arguments presented by Intervenors, African-American voters, in Section 5 declaratory judgment action), *aff'd*, 459 U.S. 1166 (1983).

8. Moreover, Proposed Defendant-Intervenors' interests cannot be adequately represented by existing Defendants, the United States of America and Attorney General Holder, as government entities often cannot adequately represent the interests of private parties. *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (private party seeking to protect its financial interest allowed to intervene despite presence of government, which represented general public interest); *accord Natural Res. Def. Council, Inc. v. United States Envtl. Prot. Agency*, 99 F.R.D. 607, 610 n.5 (D.D.C. 1983) (pesticide manufacturers allowed to intervene because even though both EPA and intervenors wanted to uphold regulations, their interests cannot always be expected to coincide, since the court recognized that the EPA "represents the public interest, not solely that of the . . . industry"). Defendants United States and Attorney General Holder have institutional constraints that are likely to shape their litigation strategy, including the types of arguments or defenses that they may offer, which may not always coincide with the interests of Proposed Defendant-Intervenors.

9. In addition, any position taken by the United States in this matter could change during the course of the litigation. *See* Notice by Defendant-Intervenors, *Georgia v. Holder*, No. 1:10-cv-

01062, ECF No. 47 (D.D.C. Aug. 21, 2010) (noting that United States reversed its position, from denying administrative preclearance of the proposed change to preclearing a similar statute without public comment, during the course of preclearance litigation). *See also United States v. N.Y. City Bd. of Educ.*, No. 96-CV-0374, slip op. at 5, 31 (E.D.N.Y. Sept. 11, 2006) (after bringing action challenging employment examination under Title VII, United States entered into a Settlement Agreement, but subsequently "decided that it would no longer defend the lawfulness of the Agreement's remedies for those beneficiaries who had not taken any of the challenged exams").

10. Defendants do not have the same stake in this matter as Proposed Individual Intervenors or other minority voters who have experienced, and continue to experience, voting discrimination that has impaired their ability to participate fully and equally in Florida's political processes.

11. Proposed Defendant-Intervenors, all of whom reside within the State of Florida in counties covered by Section 5, also bring to the litigation a "local perspective on the current and historical facts at issue," which is not likely to be presented by Defendants and could assist the Court in understanding the precise discriminatory impact of the State of Florida's proposed voting changes. *Cnty. Council of Sumter Cnty. v. United States*, 555 F. Supp. 694, 697 (D.D.C. 1983). *See also Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004) (granting individual voters' motion to intervene in HAVA suit); *Commack Self-Service Kosher Meats, Inc. v. Rubin*, 170 F.R.D. 93 (E.D.N.Y. 1996) (noting that intervenors would bring a different perspective to case that might assist the court, and that intervention came early in the action); *Fiandaca v. Cunningham*, 827 F.2d 825, 835 (1st Cir. 1987) (likelihood that applicants would introduce additional evidence favors intervention).

12. Proposed Defendant-Intervenors have concrete and cognizable interests in this litigation and satisfy the standing requirements imposed by Article III. They have a vested interest in preventing the implementation of discriminatory voting changes that would both prevent and frustrate the ability of eligible African-American voters in Florida's covered counties to register to vote and to cast their ballots.

13. Significantly, counsel for Proposed Defendant-Intervenors have substantial experience in VRA litigation including, but not limited to, Section 5 declaratory judgment actions before three-judge panels in this Court, defending the record that led both to the initial congressional enactment and subsequent reauthorizations of the Act, and defending constitutional challenges to the VRA. *See, e.g.*, *Nw. Austin Mun. Util. Dist. No. One*, 129 S. Ct. 2504 (2009) (counsel for Proposed Defendant-Intervenors represented African-American Intervenors in a constitutional challenge to the 2006 reauthorization of Section 5 of the VRA); *Georgia v. Holder*, No. 1:10-cv-01062, ECF No. 30 (D.D.C. Aug. 3, 2010) (counsel for Proposed Defendant-Intervenors represented intervenors in declaratory judgment action regarding proposed statewide voting changes); *Shelby Cnty. v. Holder*, No. 1:10-cv-00651, ECF No. 29 (D.D.C. Aug. 25, 2010) (counsel for Proposed Defendant-Intervenors represented intervenors in case challenging the constitutionality of section 5 of the VRA); *La. House of Representatives v. Ashcroft*, No. 1:02-cv-00062 (D.D.C. 2002) (counsel for Proposed Defendant-Intervenors represented Intervenor voters in a Section 5 declaratory judgment action seeking preclearance of redistricting plan). Counsel's significant experience provides Proposed Defendant-Intervenors with competent, effective representation, and will also very likely benefit the Court in the adjudication of the issues presented in this case.

14. Intervention here is appropriate as of right pursuant to Fed. R. Civ. P. 24(a)(2), or, in the alternative, permissively pursuant to Fed. R. Civ. P. 24(b)(1).

15. Counsel for Defendants United States and Attorney General Holder does not oppose permissive intervention by Proposed Defendant-Intervenors. Counsel for Plaintiff State of Florida opposes this Motion.

WHEREFORE, Proposed Defendant-Intervenors respectfully request that their Motion to Intervene as Defendants be granted.

September 6, 2011

Respectfully submitted,

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