IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,

Plaintiff,

v.

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

Defendants,

and

WENDY DAVIS, et al.,

Defendant-Intervenors.

CIVIL ACTION NO.
1:11-cv-1303
(RMC-TBG-BAH)

ADVISORY

The State of Texas moved to dismiss its complaint because the coverage formula in Section 4(b) of the Voting Rights Act violates the Constitution and cannot be used to subject jurisdictions to preclearance. *Shelby County, Alabama v. Holder*, 133 S. Ct. 2612, 2631 (2013); Pls' Mot. to Dismiss (ECF No. 239) at 1. The United States did not oppose the State's motion, *see* United States' Resp. to Pls' Mot. to Dismiss (ECF No. 247), and the Court granted the motion and closed the case, Memorandum and Order (ECF No. 255). The subsequent motions for attorneys' fees filed by the Davis Intervenors, the Gonzales Intervenors, and the Texas NAACP Intervenors are frivolous and should be promptly denied.

The federal statute purporting to require preclearance was a nullity, and the entire exercise of subjecting Texas to "preclearance" was an unconstitutional imposition on the State. *See Shelby County*, 133 S. Ct. at 2631; *Norton v. Shelby County*, 118 U.S. 425, 442 (1886) ("[A]n unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."). These proceedings have already imposed significant unconstitutional burdens on the State. The intervenors unnecessarily aggravated those unconstitutional burdens by injecting themselves into the State's then-compulsory preclearance lawsuit against the United States. They should not be allowed to further aggravate 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.

The State of Texas is the "prevailing party" in this case because Congress violated the Constitution when it subjected Texas to preclearance in 2006—Texas never should have been forced to pursue this litigation before implementing its legislatively enacted redistricting plans. The intervenors cannot be the "prevailing party" for their role in aggravating the unconstitutional burden of preclearance and delaying the State's reapportionment efforts following the 2010 Census.

The only basis upon which the intervenors could conceivably have claimed prevailing-party status—this Court's denial of preclearance—was vacated on appeal by the Supreme Court. *See* Judgment of the Supreme Court of the United States, *Texas v. United States*, No. 12-496 (ECF No. 253). It is well-established that "[w]hen [the Supreme Court] applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether

such events predate or postdate our announcement of the rule." *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 97 (1993); *see also Landgraf v. USI Film Prods.*, 511 U.S. 244, 279 n.32 (1994) (noting that under the "firm rule of retroactivity," the Supreme Court's holdings apply to all pending cases).

The intervenors' attempt to recover attorneys' fees and costs from the State of Texas disregards the holding of *Shelby County* and the Supreme Court's disposition of the appeal in this case. *Shelby County* requires immediate denial of all motions for fees and costs, and the State does not intend to respond unless requested to do so by the Court.

Dated: December 20, 2013

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via the Court's electronic notification system to the following parties on December 20, 2013:

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