IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHELBY COUNTY, ALABAMA,
201 West College Street
Columbiana, AL 35051

Plaintiff,

vs.

ERIC H. HOLDER, JR.,
in his official capacity as
ATTORNEY GENERAL OF THE
UNITED STATES,
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Defendant,

and,

BOBBY LEE HARRIS,
112 Reese Drive
Alabaster, AL 35007

Applicant to Intervene.

Civil Action No.: 1:10-CV-651 (JDB)

MEMORANDUM IN SUPPORT OF MOTION
TO INTERVENE AS DEFENDANT

TABLE OF CONTENTS

I. Introduction 1

II. Background 2

III. Applicant Is Entitled to Intervention of Right 4

A. Applicant Satisfies the Requirements of Article III Standing 5

B. Applicant's Motion Is Timely 6

C. Applicant Has a Substantial Interest in the Underlying Litigation 7

D. Disposition of this Case Is Likely to Impair Applicant's Interests 8

E. The Existing Parties May Not Adequately Represent Applicant Interests 9

IV. In the Alternative, This Court Should Grant Permissive Intervention Under Rule 24(b)(1) 13

TABLE OF AUTHORITIES

Page(s)

CASES

Beer v. United States,
374 F. Supp. 363 (D.D.C. 1974), *remanded on other grounds*, 425 U.S. 130 (1976) 11

Blanding v. Du Bose,
454 U.S. 393 (1982) 11

Bossier Parish Sch. Bd. v. Reno,
157 F.R.D. 133 (D.D.C. 1994) 11

City of Lockhart v. United States,
460 U.S. 125 (1983) 11

City of Port Arthur, Texas v. United States,
517 F. Supp. 987 (D.D.C. 1981) 11

City of Richmond, Virginia v. United States,
376 F. Supp. 1344 (D.D.C. 1974), *remanded on other grounds*, 422 U.S. 358 (1975) 11

County Council of Sumter County, SC v. United States,
555 F. Supp. 694 (D.D.C. 1983) 6, 7, 11

Diamond v. Charles,
476 U.S. 54 (1986) 7

Dimond v. Dist. of Columbia,
792 F.2d 179 (D.C. Cir. 1986) 9-10

Fund for Animals, Inc. v. Norton,
322 F.3d 728 (D.C. Cir. 2003) .... passim

Georgia v. Ashcroft,
539 U.S. 461 (2003) 11

Johnson v. Mortham,
915 F. Supp. 1529 (N.D.Fla. 1995) 13-14

Lopez v. Monterey County,
519 U.S. 9 (1996) 5

Miller v. Silbermann,
832 F. Supp. 663 (S.D.N.Y. 1993) 13

Moore v. Detroit School Reform Bd.,
293 F.3d 352 (6th Cir. 2002) ... 8

Morse v. Republican Party of Virginia,
517 U.S. 186 (1996) ... 8, 9

Mova Pharm. Corp. v. Shalala,
140 F.3d 1060 (D.C. Cir. 1998) ... 5

Nationwide Mut. Ins. Co. v. Nat'l REO Mgmt.,
205 F.R.D. 1 (D.D.C. 2000) ... 6

Natural Res. Def. Council v. Costle,
561 F.2d 904 (D.C. Cir. 1977) ... 9, 10, 12, 13

Nuesse v. Camp,
385 F.2d 694 (D.C. Cir. 1967) ... 10, 13

Nw. Austin Mun. Util. Dist. No. One v. Holder,
573 F. Supp. 2d 221 (D.D.C. 2008) ... 10

Roeder v. Islamic Republic of Iran,
333 F.3d 228 (D.C. Cir. 2003) ... 5

Smuck v. Hobson,
408 F.2d 175 (D.C. Cir. 1969) ... 10

South Carolina v. Katzenbach,
383 U.S. 301 (1966) ... 2, 8

S. Utah Wilderness v. Norton,
No. 01-2518, 2002 WL 32617198 (D.D.C. June 28, 2002) ... 7

Trbovich v. United Mine Workers,
404 U.S. 528 (1972) ... 9

Young v. Fordice,
520 U.S. 273 (1997) ... 11

STATUTES

42 U.S.C. § 1971 ... 2

42 U.S.C. § 1973 ... 1, 2

42 U.S.C. § 1973b(a)(4) ... 9

42 U.S.C. § 1973(b)(a)(1)-(6) ... 3

120 Stat. 577, § 1, *amended by* Pub.L. 110-258, § 1, (July 1, 2008) 2

Pub. L. 109-246 (July 27, 2006) 2

RULES

Fed. R. Civ. P. 24(a) 1, 4

Fed. R. Civ. P. 24(a)(2) .... passim

Fed. R. Civ. P. 24(b) 1, 14

Fed. R. Civ. P. 24(b)(1) 1, 13, 14

Fed. R. Civ. P. 56(f) 6

U.S. Dist. Ct. D.D.C. Loc. Civ. R. 7(j) 1

OTHER AUTHORITIES

H. Rep. No. 109-478 (2006) 9

S. Rep. No. 109-295 (2006) 5

I. Introduction

Proposed Intervenor Bobby Lee Harris ("Applicant") respectfully submits this memorandum of points and authorities in support of his motion to intervene as a defendant in this case pursuant to Fed. R. Civ. P. 24(a), or in the alternative Fed. R. Civ. P. 24(b), and Local Rule 7(j).

Plaintiff Shelby County ("Plaintiff") filed this action on April 27, 2010, seeking a declaratory judgment that Sections 4(b) and 5 of the Voting Rights Act, 42 U.S.C. §§ 1973b(b), 1973c, *et seq.* are unconstitutional, and an injunction against any enforcement of those provisions by the named defendant, Attorney General Eric H. Holder, Jr. ("Defendant"). The relief sought by Plaintiff would nullify a core provision of the Voting Rights Act designed to protect against discriminatory voting changes in jurisdictions with a history of discrimination. As a racial minority protected by Section 5 and a registered voter residing in Shelby County, Applicant has a direct and substantial interest in the continued enforcement of these key provisions of the Voting Rights Act in Shelby County. As set forth below, Applicant is entitled to intervention as a matter of right under Fed. R. Civ. P. Rule 24(a) because he plainly satisfies the applicable requirements: his substantial interest in the enforcement of Sections 4(b) and 5 will be impaired if those provisions were to be invalidated; his motion is timely; and his interests may not adequately be represented by Defendant. *See Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003).

Alternatively, Applicant should be permitted to intervene under Rule 24(b)(1). This Court has regularly permitted intervention by minority voters in cases brought under Section 5 of the Voting Rights Act. *See infra* at 10-11. Because there is no risk that

permitting Applicant to intervene would delay or prejudice the orderly adjudication of Plaintiff's claims, this Court should permit Applicant to intervene.

II. Background

The Voting Rights Act, Pub. L. No. 89-110 (1965) ("VRA"), is one of the most important civil rights measures in the history of the United States. Enacted originally in 1965, the VRA was designed by Congress to banish the blight of racial discrimination in voting. *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966).

The VRA includes powerful remedies intended to prevent the implementation of racially discriminatory voting practices and procedures in states where such discrimination has been most flagrant. One critical such remedy is Section 5 of the VRA, which in covered jurisdictions requires the suspension of all new voting regulations pending review by federal authorities, *id.* at 315-16, thereby preventing jurisdictions with a history of discrimination from implementing new discriminatory voting practices or procedures. On July 27, 2006, after congressional passage with overwhelming bipartisan support, President George W. Bush signed into law the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, Cesar E. Chavez, Barbara C. Jordan, William C. Velasquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006, which extends Section 5's applicability for 25 years. See Pub. L. 109-246 (July 27, 2006), 120 Stat. 577, § 1, *amended by* Pub. L. 110-258, § 1, (July 1, 2008), 122 Stat. 2428, codified as amended at 42 U.S.C. §§ 1971 & 1973.

Plaintiff is a political subdivision of the State of Alabama, and has been subject to Section 5 of the VRA since it was originally enacted on August 7, 1965. Complaint ¶¶ 28-29. As a result, Plaintiff is obligated to obtain preclearance for any changes in voting

procedure to ensure that such changes do not have a discriminatory purpose or effect on minority voters. Plaintiff has averred that it is ineligible to bail out[1] of coverage and preclearance under Section 4(a) of the VRA because within the past ten years, it has failed to comply with the Section 5 preclearance requirements on at least one occasion, and because within the past ten years, the Attorney General has interposed an objection to certain voting changes submitted for preclearance by the City of Calera, a governmental unit within the territory of Shelby County. Complaint ¶¶ 34(a)-(b). Plaintiff nonetheless alleges that the conditions that caused Alabama to be covered by Section 5 of the VRA no longer exist. Complaint ¶ 30. This action seeks to challenge the constitutionality of the Section 5 preclearance provision and the Section 4(b) scope of coverage provision of the VRA.

Applicant Bobby Lee Harris seeks to intervene in this case as a defendant in support of Section 5's constitutionality. Applicant is a resident and registered voter of Shelby County, where he has lived for over 50 years. As an African-American who has been involved in local politics, Mr. Harris has first-hand knowledge of the experiences of minority voters in Shelby County and the importance of Section 5 in protecting minority voting rights. In 1992, he was elected for his first term to the City Council of Alabaster, a city located in Shelby County, a position he ultimately held for 12 years. In 2000, after having served two terms as City Councilman, Mr. Harris won his reelection, but only after the Department of Justice interposed a Section 5 objection to certain municipal

[1] "Bail out" is the term generally used to describe the procedure under the VRA by which "political subdivisions" covered by Section 5 may seek exemption from Section 5's preclearance obligations. To bail out, a political subdivision must obtain a declaratory judgment from this Court that the political subdivision meets the statutory requirements justifying its removal from continued coverage by Section 5. *See* 42 U.S.C. § 1973b(a)(1)-(6).

annexations that had been added to his election district (Ward 1) without having first been precleared as required by Section 5. Mr. Harris won that election by a very narrow margin, as the direct result of the Section 5 objection, because the unlawful votes cast within the newly-annexed areas were excluded from the final count. He would have lost the election if those votes had been included in the final count. Several residents of those newly-annexed areas sued the City and Mr. Harris; ultimately, in 2002, the Alabama Supreme Court determined that it did not have jurisdiction to hear the VRA claims, thereby allowing the exclusion of the annexed areas to stand, as a consequence of which Mr. Harris retained his seat. In 2004, Mr. Harris lost his attempt to win reelection to a fourth term. There has been no minority representative on the Alabaster City Council since that time.

III. Applicant Is Entitled to Intervention of Right

Rule 24(a) of the Federal Rules of Civil Procedure provides:

> On timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by 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.

In the D.C. Circuit, a party seeking to intervene must satisfy the basic standing requirements of Article III of the Constitution. *Fund For Animals*, 322 F.3d at 732-33. Once the applicant has shown Article III standing, this Court must consider four factors in determining whether the standard for intervention of right under Rule 24(a)(2) has been met: (1) the timeliness of the motion; (2) whether the applicant claims an interest relating to the property or transaction which is the subject of the action; (3) whether the applicant is so situated that the disposition of the action may as a practical matter impair

or impede the applicant's ability to protect that interest; and (4) whether the applicant's interest is adequately represented by existing parties. *Id.* at 731 (quoting *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1074 (D.C. Cir. 1998) (internal citations omitted)). As demonstrated below, Applicant has standing and satisfies all four additional factors required to intervene under Rule 24(a)(2).

A. Applicant Satisfies the Requirements of Article III Standing[2]

A party has standing to intervene to prevent the disruption of an existing legal arrangement if that party has a cognizable interest in preserving the status quo. *See, e.g., Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) (holding that the United States had standing to intervene to uphold certain international accords when its interests would be "impaired if plaintiffs obtained a judgment in violation of the Accords"); *Fund For Animals*, 322 F.3d at 733 (holding that where the applicant intervenor-defendant sought to defend a regulation challenged in court, the applicant had standing not because of an injury it had already suffered, but in part because it "would suffer concrete injury if the court were to grant the relief the plaintiffs seek").

In this case, as an intended beneficiary of the statute, Applicant has a legally cognizable interest in preserving the current protections guaranteed by Section 5 of the VRA. "Congress designed the preclearance procedure to forestall the danger that local decisions to modify voting practices will impair minority access to the electoral process." *Lopez v. Monterey County*, 519 U.S. 9, 23 (1996) (internal quotations and citations omitted); S. Rep. No. 109-295, at 2 (2006) ("The Act is rightly lauded as the crown jewel

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[2] The D.C. Circuit has questioned whether prospective defendant-intervenors need to do anything further to satisfy Article III standing requirements at all where the requirements of Rule 24(a) are met. *See Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) ("[A]ny person who satisfies Rule 24(a) will also meet Article III's standing requirement.").

of our civil rights laws because it has enabled racial minorities to participate in the political life of the nation."). If Section 5 is invalidated, Applicant's federally protected voting rights would be at risk of injury or impairment, because Shelby County would be free to enact or administer changes to its voting practices and procedures without first showing such changes do not have a discriminatory purpose or effect. Thus, Applicant has a vested interest in retaining the protections of the Section 5 preclearance process.

B. Applicant's Motion Is Timely

Applicant's intervention motion is timely. Plaintiff filed its Complaint on April 27, 2010 and its Motion for Summary Judgment on June 8, 2010, before Defendant filed an answer or responsive pleading. On June 22, 2010, Defendant filed its Memorandum in Opposition to the Plaintiff's Motion for Summary Judgment seeking a denial of Plaintiff's Motion pursuant to Rule 56(f) of the Federal Rules of Civil Procedure. Defendant filed its Answer to the Complaint on June 28, 2010. Thus, this motion is filed only three days after Defendant's first responsive pleading, and before any hearing has been held or scheduled by this Court. Oral argument on Plaintiff's Motion for Summary Judgment has not yet been scheduled, nor has any discovery commenced. Permitting Applicant to intervene would in no way prejudice either the Plaintiff or the Defendant. On these facts, Applicant's request is unquestionably timely. *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); *County Council of Sumter County, SC v. United States*, 555 F. Supp. 694, 697 (D.D.C. 1983) (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).

C. 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).

Plaintiff seeks to invalidate a core provision of the VRA, thereby undermining the voting rights of Applicant and other minority voters in Shelby County. Applicant has a direct and concrete interest in retaining the protections afforded by Section 5's preclearance requirements. Moreover, Applicant's history and involvement in local politics underscores both his interest in the subject matter of this action and his ability to provide this Court with relevant information regarding the impact of the VRA on minority voters in Shelby County. *See, e.g., County Council of Sumter County*, 555 F. Supp. at 696-97 (granting intervention motion of African-American citizens in a Section 5 preclearance action based on their "local perspective on the current and historical facts at issue").

The D.C. Circuit has collapsed this "interest" test into the requirement that prospective intervenors demonstrate constitutional standing. *See Fund For Animals*, 322 F.3d at 735 (holding that when an applicant has constitutional standing, that fact "is alone sufficient to establish that [it] has 'an interest relating to the property or transaction which is the subject of the action'") (quoting Fed. R. Civ. P. 24(a)(2)). Because Applicant has

constitutional standing, *see supra* at 5-6, sufficient "interest" under Rule 24(a)(2) follows *a fortiori*.

D. Disposition of this Case Is Likely to Impair Applicant's Interests

Beyond demonstrating an interest in the underlying litigation, Applicant must show that his interest *may* be impaired or impeded by the disposition of the action. Fed. R. Civ. P. 24(a)(2) (emphasis added). Interpreting this requirement, the D.C. Circuit has noted that an applicant need not show that it would be bound by a judgment in the action, but need only show that as a practical matter, its interests would likely be impaired or impeded in some manner were it not allowed to intervene. *Fund For Animals*, 322 F.3d at 735.

A judgment holding Section 5 unconstitutional would enable—and could embolden—Shelby County and other jurisdictions to implement extensive and potentially harmful changes to voting procedures. *See Morse v. Republican Party of Virginia*, 517 U.S. 186, 225 (1996) ("the fundamental purpose of the preclearance system was to 'shift the advantage of time and inertia from the perpetrators of the evil to its victims,' by declaring all changes in voting rules void until they are cleared by the Attorney General or by the District Court for the District of Columbia") (quoting *South Carolina v. Katzenbach*, 383 U.S. at 328); *Moore v. Detroit School Reform Bd.*, 293 F.3d 352, 366 (6th Cir. 2002) ("[Section] 5 was designed to respond to the use of 'the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees.") (quoting *Katzenbach*, 383 U.S. at 335). Indeed, in reauthorizing the Voting Rights Act, the House of Representatives observed that discrimination "diminishing the minority community's

ability to fully participate in the electoral process and to elect their preferred candidates of choice" still exists, albeit in a more subtle form. H. Rep. No. 109-478, at 6 (2006). The elimination of Section 5's preclearance regime would mean that every objectionable voting change would have to be challenged "case-by-case," resulting in the imposition of the "very burden [Section] 5 was designed to relieve." *Morse*, 517 U.S. at 225-26. Such an outcome would plainly impair Applicant's ability to protect himself from discriminatory voting laws.

E. The Existing Parties May Not Adequately Represent Applicant Interests

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 his interest. *Natural Res. Def. Council v. Costle*, 561 F.2d 904, 911 (D.C. Cir. 1977) (quoting *Trbovich v. United Mine Workers,* 404 U.S. 528, 538 n.10 (1972)). This permissive standard is satisfied here because Applicant's interests may differ substantially from those of the Attorney General. To be sure, the Attorney General represents the interests of the federal government and the public at large in defending the constitutionality of federal statutes. Applicant, however, has a unique and particularized interest in defending the voting rights of minority voters in Shelby County. Indeed, in the analogous context of a jurisdiction seeking to bail out from Section 5's preclearance obligations, Congress has granted minority voters an unconditional right to intervene as "aggrieved part[ies] . . . at any stage in such action." 42 U.S.C. § 1973b(a)(4).

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). This has held true even where the defendant is a federal agency charged with enforcing the underlying law in question and, consequently, representing the interests of the American people. *See Fund for Animals*, 322 F.3d at 736. 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:

> 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)).

The same rationale undoubtedly applies here. Applicant may well have a different perspective than the Defendant regarding (1) the history of discrimination in Shelby County, Alabama, and even nationwide; (2) the continuing presence of vote denial and vote dilution in the same; (3) the continuing barriers to African-Americans and other racial and language minorities in exercising their franchise in the same; and (4) other subsidiary issues in this case. Indeed, the presence of such differences—not uncommon between minority voters and the government—has led courts to grant numerous intervention motions in VRA cases. *See, e.g.*, *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 573 F. Supp. 2d 221, 230 (D.D.C. 2008) (granting multiple motions to intervene by African-American, Latino, and other minority voters in case seeking bail out

under Section 4(a) and challenging the constitutionality of Section 5 of the VRA); *Georgia v. Ashcroft*, 539 U.S. 461, 477 (2003) (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 (permitting intervention in light of African-American intervenors' local perspective and noting possibility of inadequate representation by United States); *Bossier Parish Sch. Bd. v. Reno*, 157 F.R.D. 133 (D.D.C. 1994) (allowing intervention by African-American voters in Section 5 declaratory judgment action); *City of Port Arthur, Texas v. United States*, 517 F. Supp. 987, 991 n.2 (D.D.C. 1981) (permitting African-American residents to intervene in Section 5 declaratory judgment action); *City of Richmond, Virginia v. United States*, 376 F. Supp. 1344, 1349 n. 23 (D.D.C. 1974) (noting that an individual voter and representative organization were allowed to participate in the action as "representatives of the black community"), *remanded on other grounds*, 422 U.S. 358 (1975); *Beer v. United States*, 374 F. Supp. 363, 367 n.5 (D.D.C. 1974) (permitting intervention by African-Americans registered to vote in New Orleans), *remanded on other grounds*, 425 U.S. 130, 133 n.3 (1976). In *Georgia v. Ashcroft*, the Supreme Court recognized the right of private parties to intervene in Section 5 actions "assuming they meet the requirements of Rule 24." 539 U.S. 461, 477 (2003).[3]

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[3] Intervention by private citizens in cases brought under the VRA is particularly valuable given that the United States and minority voters have sometimes utilized different litigation strategies in VRA cases. *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. Du Bose*, 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).

Even in the absence of an identifiable doctrinal difference, a Rule 24(a)(2) applicant may satisfy the inadequate representation prong by demonstrating relevant expertise or experience that differs from that of the parties, provided that the expertise or experience might prove useful to the Court's resolution of the question presented. In *Costle*, the D.C. Circuit explained that the NRDC's "more narrow and focused" interest would "serve as a vigorous and helpful supplement to EPA's defense." 561 F.2d at 912-13. The court further noted that "on the basis of their experience and expertise in their relevant fields, appellants can reasonably be expected to contribute to the informed resolutions of these questions when, and if, they arise." *Id.* at 913 (footnote omitted). The same is true here. Plaintiff has asserted a constitutional challenge that depends in part upon the factual contention that conditions previously justifying Alabama's coverage under Section 5 of the VRA no longer exist. *See generally* Plaintiff's Memorandum in Support of Motion for Summary Judgment at pp. 23-35. Applicant has knowledge of the conditions and experiences of minority voters in Shelby County, and some of the problems they have encountered in exercising their federally protected voting rights. Even as the Department of Justice faithfully seeks to defend Section 5's constitutionality, Applicant's "more narrow and focused" interest will undoubtedly "serve as a vigorous and helpful supplement to [the Attorney General's] defense." *Costle*, 561 F.2d at 912.

Finally, as the overwhelming weight of authority makes plain, it is of no moment that Applicant's interests may in some senses overlap with those of the Attorney General. The D.C. Circuit has explained:

> Although there may be a partial congruence of interests, that does not guarantee the adequacy of representation. As we have recognized, "interests need not be wholly 'adverse' before there is a basis for concluding that existing representation of a 'different' interest may be

> inadequate." Moreover, even "a shared general agreement . . . does not necessarily ensure agreement in all particular respects," and "[t]he tactical similarity of the present legal contentions of the [parties] does not assure adequacy of representation or necessarily preclude the [intervenor] from the opportunity to appear in [its] own behalf."

Fund For Animals, 322 F.3d at 737 (quoting *Nuesse*, 385 F.2d at 703; *Costle*, 561 F.2d at 912; and *Nuesse*, 385 F.2d at 703) (alterations in original). Thus, the fact that Applicant and Defendant may agree as to Section 5's constitutionality in no way diminishes Applicant's intervention rights under Rule 24(a)(2).

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

Even were Applicant not entitled to intervention as a matter of right, this Court should exercise its discretion to grant intervention pursuant to Fed. R. Civ. P. 24(b)(1), which permits 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."

Because Applicant proposes to defend Section 5's constitutionality by raising factual arguments and legal defenses in common with those on which the named Defendant will likely rely, Applicant satisfies the baseline 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 present in this litigation will not change if this Court grants permissive intervention. *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, the Applicant'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").

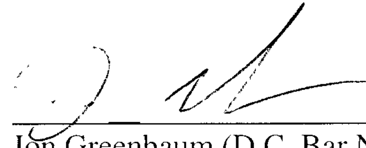
Finally, granting Applicant's motion to intervene at this stage would not delay or prejudice the adjudication of the rights of the original parties. Fed. R. Civ. P. 24(b). Defendant filed its Answer on June 28, 2010, and this Court has not conducted or scheduled a hearing, or issued a case management order. Consequently, granting Applicant's motion would not delay this litigation. Moreover, neither Plaintiff nor Defendant can plausibly claim prejudice as a result of this Court's permitting Applicant to intervene; Applicant does not propose to add a counterclaim, expand the questions presented by the Complaint, or raise any additional affirmative defenses. *See Fund for Animals*, 322 F.3d at 738 n. 11. 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 reasons stated herein, this Court should grant Applicant's motion to intervene as a matter of right under Fed. R. Civ. P. 24(a)(2); in the alternative, this Court should permit Applicant to intervene under Fed. R. Civ. P. 24(b)(1).

Dated: July 1, 2010

Respectfully submitted,



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