

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TEXAS STATE LULAC; VOTO LATINO,

Plaintiffs,

v.

BRUCE ELFANT, in his official capacity as the Travis County Tax Assessor-Collector; JACQUELYN CALLANEN, in her official capacity as the Bexar County Elections Administrator; ISABEL LONGORIA, in her official capacity as the Harris County Elections Administrator; YVONNE RAMÓN, in her official capacity as the Hidalgo County Elections Administrator; MICHAEL SCARPELLO, in his official capacity as the Dallas County Elections Administrator; LISA WISE, in her official capacity as the El Paso County Elections Administrator,

Defendants.

Civil Action

Case No. 1:21-cv-00546-LY

**PLAINTIFFS' RESPONSE TO
TEXAS ATTORNEY GENERAL
KEN PAXTON'S MOTION TO
INTERVENE**

TO THE HONORABLE LEE YEAKEL:

Plaintiffs Texas State LULAC and Voto Latino, by and through their undersigned counsel, file this Response to the Motion to Intervene filed by Texas Attorney General Ken Paxton (the "Attorney General").

The Attorney General moves for intervention as of right under 28 U.S.C. § 2403(b), which "permit[s] the State to intervene" where "the constitutionality of any statute of that State affecting the public interest is drawn in question" and the "State or any agency, officer, or employee thereof is not a party." *See* Tex. Att'y Gen. Ken Paxton's Mot. to Intervene ("Mot.") 1–2, ECF No. 53. While Plaintiffs do not generally oppose intervention by the State under Section 2403(b), they file

this response to clarify the identity of the intervening party, which is currently listed as the Attorney General himself.

While Section 2403(b) requires certification of cases “to the attorney general of the State,” it also clearly provides that “*the State*” itself shall be permitted “to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality.” 28 U.S.C. § 2403(b) (emphasis added); *see also id.* (“*The State* shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.” (emphasis added)). The Attorney General, however, now moves to intervene in his official capacity. *See* Mot. 1. His motion suggests that he seeks intervention to represent the interests of the State and not himself or his office. *See, e.g., id.* at 2 (asserting that “the interests of the State and its citizens are best served by allowing the [Attorney General] to weigh in on the constitutional questions raised by Plaintiffs’ lawsuit”); *id.* at 4 (“Disposing of this action without the State of Texas having a say will impair the State’s interests.”). But given that the State itself is not the proposed intervenor, Plaintiffs wish to clarify that, consistent with Section 2403(b), the Attorney General moves to intervene on behalf of the State and is not merely representing his own interests.¹

¹ Plaintiffs note that the Texas Attorney General’s past practice when intervening under Section 2403(b) has been inconsistent. *Compare* State of Texas’s Unopposed Motion to Intervene at 1, *Landry v. Cypress Fairbanks Indep. Sch. Dist.*, No. 4:17-cv-03004 (S.D. Tex. Sept. 25, 2018), ECF No. 47 (intervention by “[t]he State of Texas, by and through the Attorney General of Texas”), State of Texas’s Unopposed Motion to Intervene & Brief in Support at 1, *Valentine v. Smith*, No. 1-04CV-265-C (N.D. Tex. July 14, 2005), ECF No. 51 (intervention by “the State of Texas, by and through Greg Abbott, Attorney General of Texas”), and *Nash v. City of Tyler*, 736 F. Supp. 733, 734 (E.D. Tex. 1989) (intervention by State of Texas), with Motion to Intervene by John Cornyn, Attorney General of Texas at 1, *Zen Music Festivals, L.L.C. v. Stewart*, No. 3:02-CV-1998-D (N.D. Tex. Sept. 18, 2002), ECF No. 12 (intervention by “John Cornyn, in his official

Ultimately, to the extent the Attorney General seeks intervention on behalf of the State of Texas, Plaintiffs do not oppose intervention under Section 2403(b). But if the Attorney General seeks to join this suit on his own behalf or anyone else's, intervention is improper under the express terms of Section 2403(b), and the Court should require that the Attorney General identify the party he represents and the proper statutory basis, if any, for his motion to intervene.

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capacity as Attorney General of Texas”), and *Spring v. Caldwell*, 92 F.R.D. 7, 9 (S.D. Tex. 1981) (intervention by “the Texas Attorney General”).

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule CV-7(D)(3), counsel for Plaintiffs certifies that this response brief does not exceed 20 pages, exclusive of the caption, the signature block, any certificate, and any accompanying documents.

/s/ John R. Hardin _____

John R. Hardin

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