

EXHIBIT

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
STATE OF TEXAS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 12-cv-128
)	(DST, RMC, RLW)
ERIC H. HOLDER, JR.,)	
)	
Defendant.)	
_____)	

**ORDER ON MOTION TO COMPEL
DEPOSITION OF LIEUTENANT GOVERNOR**

Before the Court is the Attorney General’s Motion to Compel the Deposition Testimony of Texas Lieutenant Governor David Dewhurst. (Dkt. Nos. 166, 176 & 177). The Attorney General has served the Lieutenant Governor (“LG”) with a Notice of Deposition and seeks to compel his testimony on numerous topics regarding S.B. 14. The State of Texas argues, among other things, that the LG is not a party and that, accordingly, the Attorney General cannot compel the LG’s testimony without a subpoena.

We need not reach the issue of whether the LG is a party in this case because the Attorney General has failed to meet its burden on the merits. The vast majority of topics about which the Attorney General seeks to question the LG are barred by the legislative privilege as set forth in our previous Orders. Moreover, the Attorney General has failed to show that the circumstances in this instance warrant abrogating the privilege. To the extent that the Attorney General seeks to question the LG about non-privileged matters, such as the reasons why the LG made certain public statements about the purposes of S.B. 14 after the legislation was passed, the Attorney General has failed to show that the need to question the LG about those topics is substantial

enough to overcome the High-Ranking Official Doctrine combined with the federalism concerns set forth in Nw. Austin Mun. Util. Dist. No. One. v. Holder, 557 U.S. 193 (2009).

The statements that the LG made about the purposes of S.B. 14 are available in the public record or through other means. Accordingly, the Attorney General is still permitted to introduce at trial, if it wishes, public statements that the LG made regarding the need for or purposes of S.B. 14, such as statements from his campaign website or press releases posted on his governmental website that are referenced in the Motion to Compel. This Order should not be construed to limit the right of the Attorney General and/or Defendant-Intervenors to attempt to demonstrate, through sources of evidence other than the LG's testimony, that the LG's public statements about the purpose of S.B. 14 were pretextual or masked a discriminatory purpose.

For the foregoing reasons, the Attorney General's Motion to Compel is **DENIED**.

SO ORDERED.

Date: June 14, 2012

/s/
DAVID S. TATEL
United States Circuit Judge

/s/
ROSEMARY M. COLLYER
United States District Judge

/s/
ROBERT L. WILKINS
United States District Judge