

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SHANNON PEREZ, ET AL.,	§	
	§	
Plaintiffs	§	
	§	
v.	§	CIVIL ACTION NO.
	§	11-CV-360-OLG-JES-XR
STATE OF TEXAS, ET AL.	§	CONSOLIDATED ACTION
	§	[Lead case]
Defendants	§	

**TEXAS LATINO REDISTRICTING TASK FORCE PLAINTIFFS’
RESPONSE REGARDING REMEDY FOR STATE HOUSE DISTRICT 90**

Plaintiffs, Texas Latino Redistricting Task Force, *et al.*, file this Advisory regarding Defendants’ proposed remedy for State House District 90 (“HD90”) pursuant to the Court’s order of February 23, 2019. Dkt. 1619.

First, Defendants’ proposed remedy for HD90 cannot be adopted because it does not reflect the Legislature’s intent. The Legislature did not enact H328 during the 2013 Legislative session, although Burnam made his plan public as a proposed amendment to the redistricting bill pending in the Legislature. By itself, the fact that the Legislature could have, but did not enact H328, is enough to disqualify H328 as a remedy. Texas did not enact H328 because it did not satisfy the Legislature’s policy goals and “redistricting ordinarily involves criteria and standards that have been weighed and evaluated by the elected branches in the exercise of their political judgment.” *Perry v. Perez*, 565 U.S. at 393.

Second, Defendants’ proposed remedy, H328, is an impermissible half measure. H328 incorporates some of the Legislature’s changes to HD90 in the 2013 session, but does not reflect

the State’s desire to maintain Latino voting strength in HD90. The Legislature had two goals when it enacted HD90 in 2013: adopt changes proposed by Rep. Lon Burnam to bolster his incumbency *and* maintain Latino voting strength (in the form of majority SSVR). *Perez v. Abbott*, 267 F.Supp. 3d 750, 790, 794 (W.D. Tex. 2017). Ultimately the Legislature’s pursuit of those two goals, which were inextricably intertwined, resulted in an unconstitutional racial gerrymander. When deciding on a remedy however, this Court is not free to recognize one legislative goal and ignore the other.

As demonstrated in the tables below, Defendants’ proposed H328 reduces Latino voting strength when compared to current and past HD90. Plan H328 lowers SSVR and Spanish-surnamed total turnout significantly, as it did when it was created by the same mapdrawers who racially gerrymandered the district in 2013. *See* Dkt. 1540 at 68 (“Kenney created an initial draft map—Plan H328—with an SSVR of 48.2%, a decrease from the 2011 Plan.”).

Today SSVR in H328 is still below 50% for Latinos. *See* Table 1 below. Under H328, Latino voters also constitute less than 50% of the voters who turned out to vote in every Democratic primary election since 2012. These differences are significant in light of the fact that HD90’s current incumbent, Representative Ramon Romero, won the racially-contested nominating election in HD90 by only 110 votes in 2014.

Table 1. HD90 Percent Spanish-Surname Voter Registration in Democratic Primary Elections in H283, H328, and H358

	H283 Enacted in 2011	H328 State Defendants	H358 Enacted in 2013 (racial gerrymander)
2012	50.8	47.8	49.7
2014	50.9	47.9	49.8
2016	51.8	48.8	50.7
2018	52.6	49.7	51.5

Source: TLC RED237 Reports, attached as Exhibit 1.

Table 2. HD90 Percent Spanish-Surname Voter Turnout in Democratic Primary Elections in H283, H328, and H358

	H283 Enacted in 2011	H328 State Defendants	H358 Enacted in 2013 (racial gerrymander)
2012	46.4	42.9	43.5
2014	53.6	48.4	49.1
2016	50.7	49.4	51.9
2018	43.3	39.5	40.7

Source: TLC RED237 Reports, attached as Exhibit 1.

It was never the Texas Legislature’s intent to reduce Latino voting strength in HD90 and that reduction in H328 disqualifies Defendants’ proposal as a remedy.

By contrast, Task Force Plaintiffs’ proposed remedy is the most recent legal and constitutional expression of legislative intent for HD90. *See* Dkt. 1592 (proposing H407 which are the 2011 boundaries of HD90). The Texas Legislature enacted the boundaries of HD90 in 2011 and this Court is required to accept those boundaries absent any legal or constitutional defect. *Perry v. Perez*, 565 U.S. 388, 397–98 (2012) (“If a State has chosen to accept the burden of [certain line-drawing] and its decision to do so is otherwise lawful, there is no warrant for a district court to ignore the State’s decision.”).

The outcome of this litigation was a ruling that the boundaries of Tarrant County state house districts in H283 did not violate the Constitution or any laws. *See Abbott v. Perez*, 138 S. Ct. 2305, 2335 (2018) (concluding that “[e]xcept with respect to one Texas House district, we hold that the court below erred in effectively enjoining the use of the districting maps adopted by the Legislature in 2013.”). Accordingly, there is no basis, when repairing the racial gerrymander in HD90, to depart from the Legislature’s goal of maintaining Latino voting strength in HD90.

Among the options before it, the best option for the Court is not to pick and choose among policies of the Legislature. The best option is to adopt the last legal version of HD90, which is in H407.

If the Court decides to depart from Legislative intent as expressed H407, the Task Force Plaintiffs advise the Court that when compared to Defendants' proposal H328, MALC Plaintiff's proposed remedy H411 better satisfies the goals of repairing the racial gerrymander and maintaining Latino voting strength in HD90.

DATED: March 11, 2019

Respectfully submitted,

MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND

/s/ Nina Perales

Nina Perales

TX Bar No. 24005046

Ernest I. Herrera

TX Bar No. 24094718

*Denise Hulett

CA Bar No. 121553

110 Broadway, Suite 300

San Antonio, TX 78205

(210) 224-5476

FAX (210) 224-5382

*Admitted *Pro Hac Vice*

COUNSEL FOR PLAINTIFFS TEXAS
LATINO REDISTRICTING TASK
FORCE, RUDOLFO ORTIZ, ARMANDO
CORTEZ, SOCORRO RAMOS,
GREGORIO BENITO PALOMINO,
FLORINDA CHAVEZ, CYNTHIA
VALADEZ, CESAR EDUARDO
YEVENES, SERGIO CORONADO,

GILBERTO TORRES, RENATO DE LOS
SANTOS, JOEY CARDENAS, ALEX
JIMENEZ, EMELDA MENENDEZ,
TOMACITA OLIVARES, JOSE
OLIVARES, ALEJANDRO ORTIZ, AND
REBECCA ORTIZ

Attorneys for Texas Latino Redistricting Task
Force, *et al.*

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the 11th day of March, 2019, I electronically filed the above and foregoing document using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Nina Perales
Nina Perales