IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

WALTER SESSION, ET AL.,
PLAINTIFFS,

V.

NO. 2:03CV354
CONSOLIDATED

THREE-JUDGE PANEL

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF TEXAS, ET AL.,
DEFENDANTS.

PLAINTIFFS', CONGRESSWOMAN SHEILA JACKSON LEE AND CONGRESSWOMAN EDDIE BERNICE JOHNSON, MOTION FOR SUMMARY JUDGMENT

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TO THE HONORABLE THREE-JUDGE PANEL:

Plaintiffs, Congresswoman Sheila Jackson Lee and Congresswoman Eddie Bernice Johnson, file this their motion for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure. Plaintiffs would show unto the Court as follows:

I. SUMMARY JUDGMENT STANDARD

Rule 56(c) of the Federal Rules of Civil Procedure allows summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Melton*

v. Teachers Ins. & Annuity Ass'n of Am., 114 F.3d 557, 559 (5th Cir. 1997). This court must decide all reasonable doubts and inferences in the light most favorable to the party opposing the motion. *See Lemelle v. Universal Mfg. Corp.*, 18 F.3d 1268, 1272 (5th Cir. 1994); *Walker v. Sears, Roebuck & Co.*, 853 F.2d 355, 358 (5th Cir. 1988). The party moving for summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. *See Celotex*, 477 U.S. at 323; *Lynch Properties, Inc. v. Potomac Ins. Co.*, 140 F.3d 622, 625 (5th Cir. 1998). Once the moving party has satisfied this burden, the non-moving party must set forth specific facts showing a genuine issue for trial. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Edwards v. Your Credit, Inc.*, 148 F.3d 427, 431-32 (5th Cir. 1998).

II. Underlying Facts Supporting Summary Judgment.

1. As stated in Plaintiffs' First Amended Complaint, this Court has continuing jurisdiction in light of the Court's judgment in *Balderas, et al. v. Texas*, Civil Action No. 6:01-CV-158 (E.D. Tex. November 14, 2001) (Three-Judge Panel) (*per curiam*), *summarily aff'd*, 536 U.S. 919 (2002) (Plan 1151C).

2. The Three-Judge Panel ruled that the existing

congressional districts were unconstitutionally malapportioned due to the Legislature's failure to apportion the state into senatorial and representative districts. U.S. CONST. art. I, section 2, cl. 3 (giving states a limited grant of authority to establish the methods of electing their representatives). The Court drawn plan was Plan 1151C.

3. The Texas Legislature's redistricting plan (Plan 1374C) is inconsistent with the Court's imposed plan and injunction (Plan 1151C) entered in Balderas, *et al. v. the State of Texas*.

4. Congresswoman Sheila Jackson Lee is an elective office holder to the United States House of Representatives and serves the electorate for the 18th Congressional District. The 18th Congressional District is a majority-minority district located in Houston, Harris County, Texas. Congresswoman Jackson Lee is an American citizen of African heritage.

5. Congresswoman Eddie Bernice Johnson is an elective office holder to the United States House of Representatives and serves the electorate for the 30th Congressional District. The 30th Congressional District is a majority-minority district located in Dallas, Dallas County, Texas.

Congresswoman Eddie Bernice Johnson is an American citizen of African heritage.

6. The State of Texas is a covered jurisdiction under the Voting Rights Act. *Briscoe v. Bell*, 432 U.S. 404 (1977).

7. No intervening facts existed between the Court's remedial congressional redistricting plan and injunction in 2001 and the Texas Legislature's apportionment in 2003.

8. The redistricting undertaken by the Texas Legislature involved the same thirty congressional districts that were the subject of the prior litigation in *Balderas*. The State of Texas was a party to the *Balderas* litigation.

10. The changes to the 18th and 30th Congressional Districts by the State's plan in 1374C mirrors proposed plans by the State of Texas in the *Balderas* litigation.

III. Reason Why Summary Judgment is Proper.

A. Unconstitutional Redistricting.

Within every subsequent term of ten years, in such manner as they shall by law direct.

Summary judgment is requested in light of the factual history of legislative redistricting by the Texas Legislature after the 2000 census. The Texas Legislative Council redistricting summary is attached and incorporated

under **Tab A** herein. The Three-Judge Panel's opinion in *Balderas v. State, supra*, contains the factual history of legislative redistricting and will not be repeated here. What is clear is the Texas Legislature failed to report out and/or enact a valid plan after the 2000 census. The Three-Judge Panel's Final Judgment was entered on November 14, 2001 (*see* under **Tab B**). The Court rendered judgment "declaring that the existing congressional districts in the State of Texas are unconstitutionally malapportioned and adopting Plan 1151C as the remedial congressional redistricting plan for the State of Texas." The State of Texas conducted congressional elections during the 2002 election cycle under Plan 1151C.

It is Plaintiffs/Intervenors', Congresswomen Sheila Jackson Lee and Eddie Bernice Johnson, position that out-of-term apportionment is inconsistent with article I, section 2, clause 3 of the United States Constitution and therefore summary judgment should be granted as a matter of law.

Article I, section 2, clause 3, of the United States Constitution provides, "Representatives . . . shall be apportioned among the several States . . . according to their respective numbers." Article 1 also requires that "[t]he actual enumeration shall be made within three years

after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct."

The United States Constitution is silent regarding repeated reapportionment (more than every ten years). However, the Supreme Court's decision in *U. S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), is instructive. In *U. S. Term Limits*, the Court was presented with "a challenge to an amendment to the Arkansas State Constitution that prohibits the name of an otherwise-eligible candidate for Congress from appearing on the general election ballot if that candidate has already served three terms in the House of Representatives or two terms in the Senate." *Id.* at 783. Arkansas urged the Court to allow the term limits imposed by the Arkansas Legislature. Arkansas also submitted to the Court that "whatever the constitutionality of additional qualifications for membership imposed by Congress, the historical and textual materials discussed in *Powell* do not support the conclusion that the Constitution prohibits additional qualifications imposed by the States." And that "[i]n the absence of such a constitutional prohibition,

. . . the Tenth Amendment and the principal of reserved powers require the States be allowed to add such qualifications." *Id.* at 798.

The Court in *U. S. Term Limits* explained that "the power to regulate the incidents of the federal systems is not a reserve power of the States, but rather is delegated by the Constitution." *Id.* at 805. The Court's preclusion in context of the exercise of state power is instructive. "In the absence of any constitutional delegation to the States of power to add qualifications to those enumerated in the Constitution, such a power does not exist." *Id.*

In *Prigg v. Commonwealth of Pennsylvania*, 41 U.S. 539 (1842), the Court, through Justice Storey, found unconstitutional a Pennsylvania statute that prevented the taking of negroes or mulatto slaves or servants for life from the State of Pennsylvania to any other state. The statute also deemed any such taking as kidnapping. The then constitutional provision upon which the Court addressed in *Prigg* read as follows: "No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to

whom such service or labor may be due." U.S. CONST. art. IV, § 2.

Edward Prigg was indicted under Pennsylvania law for taking a negro woman, Margaret Morgan, a slave for life from Pennsylvania from a Margaret Ashmore, a citizen of Maryland. Ashmore asserted that the slave escaped from Maryland and had fled to Pennsylvannia. Prigg was convicted by a jury, took an appeal to the Supreme Court of Pennsylvania where the judgment was affirmed, pro forma. Prigg then presented a writ of error to the United States Supreme Court. *Id.* at 608-609.

Even though the subject matter in *Prigg* concerned a matter as odious as slavery, the Court correctly determined that Pennsylvania was without power to do indirectly what it could not do directly (to take an act that would have the effect of declaring a portion of the Constitution without effect). Justice Storey, writing for the Court, explained, "[i]t purports to punish as a public offence against that state, the very act of seizing and removing a slave, by his master which the constitution of the United States was designed to justify and uphold." *Id.* at 626.

The action taken by the Texas Legislature should suffer the same fate. That is, State of Texas cannot do indirectly what it cannot do directly. If Texas sought to

directly argue that it has the power to redistrict any time it so chooses, such constitutional arrogance clearly would be inconsistent with the Constitution (… "according to their respective numbers." … "[t]he actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct."). It is also clear the Constitution is silent with respect to states engaging in out-of-term of mid-term redistricting, but it is Movants' position that indirect assaults on the Constitution are prohibited.

In *U. S. Term Limits*, the Court rejected the default [and/or authority being engrafted by silence] rule, that is, where the Constitution does not speak either expressly or by necessary implication - the Federal government lacks that power and the States enjoy it. *See U. S. Term Limits*, 514 U.S. at 796, n.12; *see also McCullough v. Maryland*, 4 Wheat. 316, 4 L.Ed. 579 (1819); *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175 (1995); *Bendix Autolite Corp. v. Midwesco Enterprises*, Inc., 486 U.S. 888 (1988). The State can argue that the question of mid-term redistricting and/or out-of-term redistricting is an open question because of no constitutional language prohibiting the same. Any such submission should be rejected as a

matter of law as inconsistent with the ruling in *U. S. Term Limits*.

From a historical perspective, state legislatures have traditionally not engaged in mid-term or out-of-term redistricting. The few number of past attempts reflects the historical respect States have for Article I and the recognition of the federal nature of the office.

And finally, one need not engage in any complex theoretical exercises to understand the danger of redistricting or not redistricting at will. *See, e.g., Reynolds v. Sims*, 377 U.S. 533 (1964) (no redistricting of Alabama legislature since 1900).1 As the Southern District of Texas stated in *Vera v. Bush*:

> Considering that Texas is but two election cycles away from redistricting the state following the year 2000 census, it is not prudent to once again redraw Texas's congressional districts. Stability and continuity in the electoral process as well as the potential for voter confusion all weigh against any further tinkering with Texas's congressional districts.
>
> ...
>
> Despite these mandates governing a trial court's redistricting efforts, this Court finds--paralleling the Supreme Court's finding in *Abrams* regarding Georgia's congressional districts--that equitable considerations disfavor engaging in yet another redistricting effort to correct minuscule population deviations in this Court's 1996

1 The *Reynolds* court, in dictum, avoided expressing a view whether more frequent reapportionment would or would not be constitutionally permissible or practically desirable. *See* at 377 U.S. at 584.

> interim plan. *See Abrams*, 521 U.S. at ---- - ---- , 117 S.Ct. at 1940- 41.

Vera v. Bush, 980 F.Supp. 251, 253 (S.D. Tex. 1997).

This is not a case where the federal constitutional claim is premised on an unsettled question of state law (*see, e.g., Harris County Commissioners Court v. Moore*, 420 U.S. 77 (1975)); this is not a case where a legislature was faced with a court's interim plan and was given permission to enact a final plan. In Cherokee County Plaintiffs' Brief in Opposition to Judicial Modification to Texas Election Procedures and Request for Expedited Consideration of Application for Preliminary Injunction, the Cherokee County Plaintiffs argue that summary judgment may not be applicable until after the Justice Department's decision on whether to [pre]clear Plan 1374C, citing *Wise v. Lipscomb*, 437 U.S. 535, 542 (1978) and *Connor v. Waller*, 421 U.S. 656 (1975) (*per curiam*). Plaintiffs/Intervenors, Congresswoman Sheila Jackson Lee and Congresswoman Eddie Bernice Johnson, could not disagree more.

Wise v. Lipscomb concerned a City Council redistricting plan and not legislative redistricting under the United States Constitution. In addition, in *Wise*, the district court "afforded the city an opportunity as a legislative body for the City of Dallas to prepare a plan

which would be constitutional." *Wise v. Lipscomb*, 437 at 538. Third, the Justice Department's preclearance under Section 5 has no application to the question of whether a state can by-pass the Constitution after the actual imposition of a final redistricting plan by the Court. The Justice Department can preclear Plan 1374C and this Court can still find the Plan as barred by Article I of the United States Constitution (as well barring any such litigation under the history of this case).

The constitutional challenge herein differs from the Voting Rights Act in that, as the Supreme Court has stated, the Voting Rights Act was enacted as

> ... a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down .... Congress therefore decided, as the Supreme Court held it could, 'to shift the advantage of time and inertia from the perpetrators of the evils to its victim,' by 'freezing election procedures in the covered areas unless the changes can be shown to be nondiscriminatory.'

Beer v. United States, 425 U.S. 130, 140 (1976) (quoting H.R. Rep. No. 94-196, pp.55-58 (1970)). The Voting Rights Act's preclearance requirement does not apply to plans prepared and adopted by a federal court to remedy a constitutional violation." *Connor v. Johnson*, 402 U.S. 690 (1971).

And finally, it is Movant's position that the constitutional challenge asserted herein under Art. I, sec. 2, cl. 3 represents a wholly different concern for this Court's determination and/or declaration. The Voting Rights Act was passed pursuant to Congress' authority under the Fifteenth Amendment. *Lopez v. Monterrey County*, 525 U.S. 266, 282 (1999). As the Court appropriately stated in *U.S. Term Limits*:

> In our view, Amendment 72 is an indirect attempt to accomplish what the Constitution prohibits Arkansas from accomplishing directly. As the plurality opinion in the Arkansas Supreme Court recognized, Amendment 73 is an "effort to dress eligibility to stand for Congress in ballot access clothing," because of the "intent and the effect of Amendment 73 are to disqualify congressional incumbents from further service."

U.S. Term Limits, 514 U.S. at 828-29 (citations omitted).

The Constitution should not be so lightly treated. The State of Texas' attempt at redistricting after the Three-Judge Panel's final judgment and injunction in *Balderas* is improper and unconstitutional.2

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2 The Texas Attorney General, in his Opinion dated April 23, 2003, in addresses the question of the Texas Legislature's legal rights and responsibilities in connection with congressional redistricting following the 2000 census writes: "[a]bsent restraints imposed by state law, a state may redraw its congressional districts more often than every ten years," 2003 WL 1954255 at 3) (Tex.A.G.) (*citing Reynolds, supra*); *French v. Boner*, 786 F.Supp. 1328 (M.D. Tenn.), *aff'd* 963 F.2d 890 (6th Cir.), *cert. den. sub. nom.*; French *v. Metro Gov't of Nashville v. Davidson County, Tenn.*, 506 U.S. 954 1992)). It is Plaintiffs'/Intervenors' position herein that the Attorney General errs in viewing the question as turning on the state law and any restraints imposed by state law. As stated previously, the Court in *Reynolds*

Plaintiffs/Intervenors, Congresswoman Sheila Jackson Lee and Congresswoman Eddie Bernice Johnson, request that this Court declare that the State of Texas' actions are unconstitutional and inconsistent with the United States Constitution; Plaintiffs/Intervenors request that the Court grant their motion for summary judgment.

B. Collateral Estoppel.

Congresswoman Sheila Jackson Lee and Congresswoman Eddie Bernice Johnson submit that the State of Texas should be collaterally estopped from implementing districting Plan 1374C and that summary judgment be granted in context of same. Given the fact the State of Texas was a party to the underlying *Balderas* litigation, the State should be collaterally estopped from attempting to avoid the judgment by undertaking and seeking to implement an unconstitutional and out-of-time redistricting plan. There are three necessary conditions for application of collateral estoppel: "(1) the issue at stake must be identical to the one involved in the prior litigation; (2) the determination of the issues in the prior litigation must have been a critical, necessary part of the judgment in that earlier

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leaves the question open; the court in *French v. Boner* did not address legislative redistricting but municipal government reapportionment. In context of this case, the State of Texas does not show any population shifts or migration and/or growth in population over the last two years. Equity simply does not support the State's argument. *See Vera v. Bush, supra* at 253.

action; and (3) the special circumstances must not exist which would render preclusion inappropriate or unfair." *Texas Pig Stands, Inc. v. Hard Rock Cafe Int'l, Inc.*, 951 F.2d 684, 691 (5th Cir. 1992) (citations omitted).

The proposed legislative plan does by indirection what the competing parties sought by direction when this matter was considered by the Three-Judge Panel in *Balderas*. Both the 18th and 30th Congressional Districts are the by-product of the Voting Rights Act. Both districts are majority-minority districts, and in *Balderas*, both districts were the subject of adventurous line-drawing by the State of Texas and various parties. And finally, both districts were the subject of *Shaw* challenges and their current lines were formed in part to comply with the Supreme Court dictates in *Shaw v. Reno*, 509 U.S. 630 (1993) (*Shaw I*) and *Bush v. Vera*, 517 U.S. 952 (1996).

In *Balderas*, there were competing plans that threatened and/or challenged the proposed lines/plans submitted by Congresswomen Sheila Jackson Lee and Eddie Bernice Johnson and the integrity of the community of interest of the 18th and 30th Congressional districts. At the trial of the matter, Plaintiffs/Intervenors took the position that any such ameliorative changes should be directed to the existing constitutionally permissive

districts. The Court in *Miller v. Johnson,* 515 U.S. 900 (1995), rejected the adding of an additional majority/minority district and explained, "[t]he State's policy of adhering to other districting principles instead of creating as many majority-minority districts as possible does not support an inference that the plan so discriminates on the basis of race or color as to violate the Constitution." *Id.* at 924.

The Court in *Shaw v. Hunt*, 517 U.S. 899 (1996) (*Shaw II*), explained that the failure to add additional majority/minority districts is subjected to a Section 2 analysis.

> Our precedent establishes that a plaintiff may allege a §2 violation in a single-member district if the manipulation of districting lines fragments politically cohesive minority voters among several districts or packs them into one district or a small number of districts, and thereby dilutes the voting strength of members of the minority population.

Id. at 914.

In *Balderas*, the testimony revealed cohesive voting in both the 18th and the 30th Congressional Districts.[3] With

[3]Professor Richard Murray explained that in every race in the 18th Congressional District there has been a high degree of cohesion between Blacks and Hispanics. Dr. Murray also explained that generally there was an opponent in the Democratic primary and generally Blacks and Hispanics have supported the same candidate. And finally, Dr. Murray provided that the cohesion between groups applied even when the party label was removed from the formula (affirmative action vote) (Court Reporter's Record (October 24, 2001 - afternoon session), at 91, lines 1-25, 92, lines 1-15; 92, 22-25; 93, lines 1-14; 93, lines 21-25).

respect to the 30th Congressional District, various plans were submitted by different parties with different intents and effects.[4] Such districting plans either diluted the minority population and/or created a circumstance in which the voters are placed in a political apartheid district isolated solely on the basis of ethnicity/race/color (*Shaw* violation). In the 18th Congressional District, the competing interests sought to pull the African-American

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Congresswoman Eddie Bernice Johnson explained that from her practical experience, African Americans and Hispanics have voted cohesively in all her races since 1992 (Court Reporter's Record (October 26, 2001 - Morning Session), at 19, lines 16-25).

[4]The Owens plan gutted the district of economic development (ART Exhibits 3 & 5) (Court Reporter's Record (October 26, 2001 - morning session) at 29, lines 1-3)) (as does Plan 1374C). Congresswoman Johnson explained that the PATE Plan (Plan 1025C, ART Exhibit 7) took unnatural parts of the 30th and goes over and takes in a lot of Fort Worth; the Associated Republicans' and Cornyn's Plan took out economic development (see comment above); the Cornyn Plan drove down the Hispanic population; the Sudan Plan likewise took out economic development and placed the Hispanic population with likely Republican voters (Court Reporter's Record (October 26, 2001 - morning session), at 33, lines 1-25; 34, lines 1-11; 36, lines 15-25; 37, lines 1-8; 37, lines 13-25; see also Joint Exhibit No. 1 (Map 4 - Cornyn/State of Texas Plan; Map 5 - Associated Republicans Plan). The Laney Plan (Plan 1055) was not supported by Congresswoman Johnson in that it took away economic development (see Joint Exhibit 1, Maps 1 & 7). The State of Texas plan diluted the minority population with impunity and turned the district into a Republican District (Court Reporter's Record (October 26, 2001 - morning session), at 70, lines 17-25). And finally, Representative Garcia, the State of Texas and the Balderas plaintiffs submit proposals that engaged blatantly unconstitutional conduct (cherry picking every Hispanic voter possible and creating a circumstance that splits the 30th Congressional Districts; See Joint Exhibit 1, Maps 13, 15). The State of Texas' new plan for the 30th Congressional District does not cherry pick every Hispanic voter but suffers from other complaints.

population from the district that had traditionally been part of the community of interest for the district.[5]

Congresswoman Sheila Jackson Lee explained the fact that a minority is being elected in the district - reelected to the office - does not signal the strength of the underlying minority support necessary to keep the district effective (*see* Court Reporter's Record (October 29, 2001 - morning session), at 77-79, 79, lines 20-25). This same point was made by Congresswoman Eddie Bernice Johnson (*see* Court Reporter's Record (October 26, 2001 - morning session) at 13, lines 1-10; 15, lines 13-20; 27, lines 1-13).

The State of Texas continues the assault on the 18th and 30th Congressional Districts. Instead of following the Court's dictates in *Miller v. Johnson*, the State's out-of-time plan moves population from the 18th and 30th. The

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[5] By way of example, in *Balderas* the Congressional Democrats Plan (with respect to drawing lines for the 18th) took in population to the north but ignored population to the south, took population from the 18th Congressional District and provided a district with lines/configurations that were contrary to *Bush v. Vera* (Court Reporter's Record (October 26, 2001 - morning session), at 109, lines 20-25; 110, lines 1-5). The Coalition of Black Democrats (Plan 1063) submitted a district that was 38.4 percent African American population (36.3 VAP) and 31.3 percent Hispanic population (28.8 VAP). The African American population was achieved by driving the 18th Congressional District farther north and by assigning the community known as Sunnyside to the 25th Congressional District (same plan the State of Texas has made part of its new plan). Ironically, Representative Wilson admitted that Sunnyside had more in common with the inner city and the original wards of Houston than it did with Fort Bend County and/or Missouri City (Court Reporter's Record (November 1, 2001 - morning session), at 73, lines 8-25; 74, lines 1-12).

State's redistricting effort ignores *Shaw* and its progenies and assumes that *Shaw* means that map drawers seeking to create minority districts are governed by *Shaw*, but majority districts are not.[6]

The State of Texas should be collaterally estopped because of their participation in the *Balderas* litigation, the entering of the final order by Three-Judge Panel and the determination of issues with respect to the 18th and 30th Congressional District (*Shaw* districts) that preclude the relitigation of the issues until another census term. And finally, the State can show no special circumstances that render preclusion inappropriate or unfair.

IV. Prayer for Relief.

It is prayed that summary judgment be granted and State Plan 1374C be declared unconstitutional in violation

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6 By way of example the Plan removes significant areas of commercial/economic development from the 30th (ignoring Justice O'Connor admonishments in *Bush v. Vera*), packs minorities into the 30th (which promotes Balkanization and diminishes the influence of the African America and Hispanic population and removes communities of interest This is in light of the Court's plan being constitutional and the fact the same issues were presented to the Three-Judge Panel in *Balderas*. The State was a party to the litigation and should not be able to relitigate a final judgment absence a new census.

In the 18th Congressional District, the State's new plan removes Sunnyside and the Montrose areas (traditional community of interests); areas that have traditionally been a part of the 18th Congressional Districts. The State's plan places Sunnyside in the former 25th (as its sought to do in Balderas) and moves Montrose into a district that will in all likelihood vote Republican, but more importantly divesting the community from its traditional community of interest (the Houston inner city/inside the loop). Other neighborhoods affected included the Binz, Golfcrest, Midtown, South Acres and Central Southwest).

of the United States Constitution. Alternatively, the State of Texas should be collaterally estopped in light of the State being a full party to the *Balderas* litigation and as such is subjected to the final judgment and injunction imposed by the Court. Any such redistricting would not, should not and cannot take place until the 2010 census.

Summary judgment as a matter of law should be entered.

DATE: November 12, 2003.

Respectfully submitted,

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