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

SHANNON PEREZ, et al., Plaintiffs and EDDIE BERNICE JOHNSON, et al., TEXAS CONFERENCE OF NAACP BRANCHES, et al., Plaintiff-Intervenors v. STATE OF TEXAS, et al., Defendants	§ § § § § § § § § § § § § §	CIVIL ACTION NO. 11-CA-360 OLG-JES-XR (Lead Case)
MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES (MALC), Plaintiff and THE HONORABLE HENRY CUELLAR, Member of Congress, CD 28, and THE TEXAS DEMOCRATIC PARTY, et al. and LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), et al., Plaintiff-Intervenors v. STATE OF TEXAS, et al., Defendants	§ §	CIVIL ACTION NO. 11-CA-361 OLG-JES-XR [Consolidated Case]

TEXAS LATINO REDISTRICTING TASK FORCE, et al., Plaintiffs	§	
v.	§	CIVIL ACTION NO. 11-CA-490
	§	OLG-JES-XR
RICK PERRY, in his official capacity as Governor of the State of Texas, Defendants	§	[Consolidated Case]
MARGARITA QUESADA, et al., Plaintiffs	§	
v.	§	CIVIL ACTION NO. 11-CA-592
	§	OLG-JES-XR
RICK PERRY, et al., Defendants	§	[Consolidated Case]
JOHN T. MORRIS, Plaintiff	§	
v.	§	CIVIL ACTION NO. 11-CA-615
	§	OLG-JES-XR
STATE OF TEXAS, et al., Defendants	§	[Consolidated Case]
EDDIE RODRIGUEZ, et al., Plaintiffs	§	
v.	§	CIVIL ACTION NO. 11-CA-635
	§	OLG-JES-XR
RICK PERRY, et al., Defendants	§	[Consolidated Case]

PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND SUPPORTING MEMORANDUM OF LAW

I. INTRODUCTION

Plaintiffs MALC and Texas Latino Redistricting Task Force[1] file this Motion for a Temporary Restraining Order to prevent implementation of unlawful redistricting plans and to prevent immediate and irreparable injury to Latino voters in Texas. The imminent implementation in the upcoming 2012 election cycle of redistricting plans for the Texas House of Representatives, House Bill 150 (hereinafter cited as "H.B. 150," also identified as plan H283), and for the United States House of Representatives, Senate Bill 4 (hereinafter cited as "S.B. 4," also referenced as plan C185)[2] will cause this injury. The injury will arise because Texas is a jurisdiction subject to the Section 5 preclearance requirements of the Voting Rights Act, 42 U.S.C. § 1973c.[3]

As a Section 5 covered jurisdiction, Texas must submit its congressional and state house redistricting plans[4] for Section 5 preclearance, or approval, before implementation in any election. *Lopez v. Monterey County [Lopez I]*, 519 U.S. 9, 20 (1996) ("A jurisdiction subject to

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[1] Plaintiff MALC has conferred with the parties to this action and has been informed that in addition to Plaintiffs Texas Latino Redistricting Task Force, et al., that: Plaintiffs Perez et al., LULAC et al., Quesada et al., Texas Democratic Party and Cuellar join in this motion; the Rodriguez Plaintiffs join in this motion to the extent it seeks injunctive relief; and Plaintiffs Johnson et al., and Texas Conference of NAACP Branches et al., do not oppose this motion.

[2] *Perez, et al., v. Texas, et al.*, Consolidated Action, Civil Action No. 5:11-cv-00360-OLG-JES-XR, Joint Pretrial Order, Docket No. 277, filed August 31, 2011, at p. 23, Stipulation No. 93 (H.B. 150 became effective as law on June 17, 2011), and p. 25 , Stipulation No. 119 (S.B. 4 became effective as law on July 18, 2011).

[3] Texas is a political subdivision subject to the Section 5 preclearance requirements of the 1965 Voting Rights Act. 42 U.S.C. § 1973c, *as amended by* Pub. L. No. 109-246, 120 Stat. 577 (2006); *see also* 28 C.F.R. pt. 51 app. As a Section 5 covered jurisdiction, Texas must submit any change affecting voting to the United States Attorney General for administrative preclearance or to the United States District Court for the District of Columbia for judicial preclearance. This Section 5 preclearance procedure places upon Texas the burden of securing a determination that the proposed voting change does not have a discriminatory effect upon minority voting strength and was not adopted pursuant to a discriminatory purpose. 28 C.F.R. § 51.52, *as revised by* 76 Fed. Reg., 21,243, 21,248 (April 15, 2011). Instead of seeking administrative preclearance of S.B. 4 and H.B. 150, Texas has opted for judicial preclearance. *State of Texas, et al., v. United States of America, et al.*, Civil Action No. 1:11-cv-01303-RMC-TBG-BAH, Complaint filed July 19, 2011.

[4] 28 C.F.R. § 51.13 (e) (redistricting plans must be submitted for Section 5 preclearance or approval); *see also Georgia v. U.S.*, 411 U.S. 525 (1973).

§ 5's requirements must obtain either judicial or administrative preclearance before implementing a voting change."). Absent Section 5 preclearance, the redistricting plans are null and void and Plaintiffs are entitled to injunctive relief. *Id.* at 20 ("If a voting change subject to § 5 has not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting implementation of the change."); *Connor v. Waller*, 421 U.S. 656, 656 (1975) ("Those Acts are not now and will not be effective as laws until and unless cleared pursuant to § 5."); *Smith v. Beasley*, 946 F. Supp. 1174, 1178 (D. S.C. 1996) ("The D.C. court declared these candidate filings null and void and enjoined the State from taking any further action in connection with Senate elections pursuant to Act 257 until the Act received preclearance.").

According to the Texas Election Code, changes in the voting precinct boundaries to conform to the new congressional and state house redistricting plans must be finalized by October 1, 2011.[5] An Elections Administrator for the Webb County Elections Department, Oscar Villarreal, states that the process of aligning the voting precincts to the newly adopted redistricting plans is already under way.[6] Yet S.B. 4 and H.B. 150 have not received the requisite Section 5 approval. As previously noted, Texas has not sought Section 5 administrative preclearance from the U.S. Attorney General; instead, the State has filed a Section 5 declaratory judgment action in the United States District Court for the District of Columbia, seeking judicial preclearance of its congressional and state house redistricting plans. *See supra* note 3. In a recent Order, the District of Columbia Court has scheduled an oral argument on the State's motion for summary judgment for November 2, 2011.[7] Accordingly, the State will not have

[5] Declaration of Joaquin G. Avila in Support of Plaintiff s' Motion for a Temporary Restraining Order (hereinafter "Avila Declaration"), Plaintiff MALC Trial Exhibit No. 81. The new election deadlines received Section 5 preclearance on September 19, 2011, by the United States Attorney General. Avila Declaration, Exhibit 1.

[6] Declaration of Oscar Villarreal, Avila Declaration, Exhibit 2, at ¶ 8; *see also* Declaration of Rogelio Ortiz (election administrator for Cameron County), Avila Declaration, Exhibit 3, at ¶¶ 7-10.

[7] *Texas, et al., v. U.S.A.*, *supra* note 3, at litigation docket entry dated September 23, 2011 ("MINUTE ORDER scheduling oral argument on 41 Plaintiff's Motion for Summary Judgment for November 2, 2011 at 9:30 a.m. in

received Section 5 preclearance prior to October 1, 2011, the first election timeline deadline. Since the election preparations are well under way and there is no foreseeable immediate Section 5 preclearance, an unprecleared voting change will be implemented contrary to the explicit prohibition by the Supreme Court in *Lopez I*. For these reasons, Plaintiffs are entitled to a Temporary Restraining Order under Federal Rule of Civil Procedure 65(b) and 28 U.S.C. § 2284(b)(3) to restrain Defendants from implementing unprecleared voting changes and conducting illegal elections based on those changes.[8]

II. STATE OF TEXAS CANNOT IMPLEMENT REDISTRICTING PLANS WITHOUT OBTAINING SECTION 5 APPROVAL

Since Texas is a Section 5 covered jurisdiction, the congressional (S.B. 4) and state house (H.B. 150) redistricting plans must be precleared, or approved, pursuant to Section 5. As previously noted, a covered political subdivision can secure Section 5 preclearance from either the United States Attorney General or the United States District Court for the District of Columbia. 28 C.F.R. § 51.1. If administrative preclearance is pursued, the Section 5 approval process is expedited. According to the statute, the United States Attorney General has 60 days in which to determine whether the submitting jurisdiction has met its burden of demonstrating the absence of a discriminatory effect or purpose in the enactment of a proposed voting change. 42 U.S.C. § 1973c. If the Attorney General does not interpose an objection within 60 days of the submission, the change can be implemented in future elections. 28 C.F.R. § 51.1(a)(2).

Alternatively, a covered subdivision can implement the change in future elections if it obtains from the U.S. District Court for the District of Columbia a declaratory judgment that the change does not have the purpose and will not have the effect of denying or abridging the right to

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Courtroom 8. Signed by Judge Thomas B. Griffith, Judge Rosemary M. Collyer, and Judge Beryl A. Howell on 9/23/2011. (lcrmc1) (Entered: 09/23/2011)").

[8] Although a three-judge court has been convened, the initial convening judge is authorized to hear and grant a motion for a Temporary Restraining Order. *See* 28 U.S.C. § 2284(b)(3).

vote on account of race, color, or membership in a language minority group. 28 C.F.R. § 51.1(a)(1). No deadline similar to the 60-day period in the administrative process is required in the judicial process option. Until such Section 5 preclearance is secured, changes affecting voting cannot be implemented or enforced in any election in the covered subdivision. 28 C.F.R. § 51.10.

Until the U.S. District Court for the District of Columbia grants a declaratory judgment in favor of the Section 5 covered jurisdiction or the U.S. Attorney approves the submitted voting change, Defendants have not obtained the requisite Section 5 preclearance and, therefore, cannot implement any new redistricting plans that affect voting in any election in the State of Texas. 28 C.F.R. § 51.10. Without such Section 5 preclearance, an injunction should issue, preventing the implementation of the unprecleared voting change. *Lopez I*, 519 U.S. at 20 (absent preclearance, Section 5 plaintiffs are entitled to injunctive relief).

III. PLAINTIFFS ARE ENTITLED TO INJUNCTIVE RELIEF

In a Section 5 enforcement action involving Monterey County, California, the United States Supreme Court set forth a three-part test for determining whether plaintiffs in a Section 5 enforcement action are entitled to an injunction. As demonstrated below, Plaintiffs here can meet that test. *Lopez I*, 519 U.S. at 9.

The Supreme Court noted the limited and specific role of a local district court in resolving the federal compliance issues presented by cases like this one. *See Lopez I*, 519 U.S. at 23-24. The Court held that in Section 5 enforcement actions, district courts lack the authority to determine whether the voting change was adopted with a discriminatory purpose and whether it would have a discriminatory effect on minority voting strength. *Id.* That substantive determination is reserved exclusively for the United States Attorney General or, as here, the

United States District Court for the District of Columbia. *Id.* Indeed, the court's role is strictly limited:

> The . . . district court may determine only whether § 5 covers a contested change, whether the § 5's approval requirements were satisfied, and if the requirements were not satisfied, what temporary remedy, if any, is appropriate. The goal of a three-judge district court facing a § 5 challenge must be to ensure that the covered jurisdiction submits its election plan to the appropriate federal authorities for preclearance as expeditiously as possible.

Id. (internal citations omitted).

Once Section 5 plaintiffs have established that a covered jurisdiction has adopted or implemented voting changes without first obtaining the necessary preclearance, injunctive relief is required. *See id.* at 20. The only exception to the right to injunctive relief is in the "extreme circumstance" where "a seat's unprecleared status is not drawn to the attention of the [covered jurisdiction] until the eve of election and there are equitable principles that justify allowing the election to proceed." *Id.* at 21-22 (quoting *Clark v. Roemer*, 500 U.S. 646, 654-55 (1991)). In both *Clark* and *Lopez I*, the Court found no such extreme circumstance.

A. The Changes in Redistricting Plans Are Voting Changes Under Section 5 and Must Be Precleared

In accordance with *Lopez I*, the first inquiry is whether the Texas congressional (S.B. 4) and state house (H.B. 150) redistricting plans constitute changes affecting voting that must be submitted for Section 5 preclearance. There can be no dispute that the congressional and state house redistricting plans are subject to Section 5 preclearance. 28 C.F.R. § 51.13 (e); *see also Georgia v. U.S.*, 411 U.S. 525 (1973). Substantial changes to minority representation as a result of congressional redistricting by a covered jurisdiction, as here in Texas, are exactly the type of voting changes anticipated by, and stated as the purpose for, Section 5 preclearance. "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 I*, 519 U.S. at 23 (internal quotations omitted).

B. The Voting Changes Have Not Received Section 5 Preclearance

The second inquiry under *Lopez I* is whether the Section 5 covered jurisdiction has obtained either judicial or administrative preclearance prior to implementing a voting change. *Lopez I*, 519 U.S. at 20; 28 C.F.R. §§ 51.1(a)(1)-(2). Defendants have not submitted their congressional and state house redistricting plans to the Attorney General for a determination under 28 C.F.R. § 51.2.[9] As of the filing of this Motion, a Section 5 preclearance action for the redistricting plans is pending in the U.S. District Court for the District of Columbia and no trial date has been set.[10] Thus, Defendants have not secured the requisite Section 5 preclearance. Accordingly, the second part of the *Lopez I* test is met.

C. Plaintiffs Satisfy the Applicable Standards for Injunctive Relief

The third inquiry under *Lopez I* is to determine what temporary remedy is appropriate. *Lopez I*, 519 U.S. at 23. Here, an order restraining Defendants from seeking to implement the redistricting plans is appropriate to protect Plaintiffs' voting rights under Section 5.

Moreover, Plaintiffs need not satisfy the traditional requirement of irreparable harm for injunctive relief. In *United States v. Louisiana*, a three-judge court concluded that the traditional requirements for the issuance of injunctive relief could not be used to deny equitable relief in a Section 5 enforcement action. 952 F. Supp. 1151, 1159-61 (W.D. La. 1997), *aff'd*, 521 U.S. 1101. The court conducted an extensive review and "found no persuasive authority for the proposition that the traditional preliminary injunction test applies to claims for injunctive relief in the face of a § 5 preclearance violation." *Id.* at 1159-60 nn.10-11. Instead, the court observed,

[9] *See supra* note 2.
[10] *See supra* note 6.

the jurisdiction of Section 5 enforcement courts is limited *only* to enforcing Section 5 compliance and nothing more. *Id.* at 1161.

The *Louisiana* panel further reasoned that the traditional requirements for issuing injunctive relief, such as assessing whether there is a substantial probability of success on the merits and irreparable harm, are simply inapplicable to a Section 5 enforcement case. *Id.* at 1162. This is so because of the limited scope of the inquiry that three-judge courts are authorized to undertake. *See id.* at 1161. Thus, if a plaintiff has satisfactorily addressed the issues of Section 5 coverage and the implementation of an unprecleared change affecting voting, then injunctive relief is required. To hold otherwise is a result "foreclosed by Supreme Court precedent." *Id.*

Finally, the *Louisiana* three-judge court held that the traditional requirements for the issuance of injunctive relief were inapplicable to a Section 5 enforcement action because such an application would be inconsistent with the general purpose of Section 5 to prevent the implementation of voting changes that have the potential for discriminating against minority voting strength. *Id.* The court concluded:

> In the face of Congress's purpose in enacting § 5, it is simply inconceivable that we would have the authority to deny an injunction for the purpose of proceeding to a "trial on the merits." There is nothing to try in this case after we determine whether [plaintiff] is entitled to injunctive relief. The convening of this three-judge court pursuant to § 5 was done precisely to avoid the delay inherent in trials, such that we either issue an injunction because [plaintiff] has shown that a covered voting change has not been precleared, or we do not. **End of story.**

Id. (internal citation omitted) (emphasis added).

On the basis of the explicit language in *Lopez I* and the court's analysis in *Louisiana,* this Court should grant the requested Temporary Restraining Order. Plaintiffs do not need to demonstrate the traditional requirements for the issuance of injunctive relief. There is an

obvious Section 5 violation, and this Court should address it by issuing immediate injunctive relief.

Even if this Court were to apply the traditional test for the issuance of injunctive relief, Plaintiffs would be entitled to that relief. The four elements a plaintiff must establish to secure a preliminary injunction are:

> (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

Janvey v. Alguire, 628 F.3d 164, 174 (5th Cir. 2010). Plaintiffs can show all four elements.

With respect to the likelihood of success on the merits, Plaintiffs have met the requirement for issuing injunctive relief under *Lopez I*: Voting changes subject to the Section 5 preclearance provisions have not received the requisite approval, but, without injunctive relief, will nevertheless be implemented on October 1, 2011.

As to the requirement of irreparable harm, Plaintiffs will suffer such harm by either participating in an electoral process that violates federal law or by forgoing meaningful participation altogether. Moreover, the threatened deprivation of a fundamental right by itself constitutes irreparable harm. *Goldie's Bookstore, Inc. v. Superior Court of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984) ("[A]lleged constitutional infringement will often alone constitute irreparable harm."). Voting is a fundamental right since it is preservative of all other rights in our democracy. *See Reynolds v. Sims*, 377 U.S. 533, 561 (1964).

Unlike the irreparable harm that will be suffered if an injunction is not granted, Texas cannot reasonably argue harm if the injunction is granted. Nor can a Temporary Restraining Order be denied on the grounds that there are extreme circumstances that would render the issuance of such injunctive relief inequitable. Any harm suffered by Texas that has been caused

by the potential disruption of the election schedule is a self-inflicted harm. The legislative process commenced on January 10, 2011.[11] Inexplicably, the state house redistricting plan was not signed into law until June 17, 2011, well over five months later,[12] and the congressional plan was not effective as law until July 18, 2011, well over six months later.[13] To compound the delay, Texas did not pursue the expedited Section 5 administrative preclearance before the U.S. Attorney General, which would have taken only 60 days. Instead Texas has chosen to pursue the more time consuming process of judicial preclearance. As a result of these delays, the first operative date for the commencement of the election process is now less than a week away. Since this potential disruption was caused solely by Texas, the State cannot now be heard to complain of the harm that will be suffered as a result of the impending election schedule.

Accordingly, the balance of inequities tips in the Plaintiffs' favor. If Defendants implement redistricting plans before Section 5 preclearance is obtained, Latino voting strength will be diminished without any opportunity to remedy the injustice. Because implementation of voting changes that have the potential for discriminating against minority voting strength is wholly inconsistent with the general purpose of Section 5, it is in the public interest to grant Plaintiffs' Motion for a Temporary Restraining Order.

In addition, this inordinate delay has seriously jeopardized the timely implementation of the 2012 election cycle as it relates to congressional and state house elections. This Section 5 enforcement court is authorized by *Lopez I* to implement a temporary remedy. 519 U.S. at 23 ("[I]f the [§ 5] requirements [are] . . . not satisfied, what temporary remedy, if any, is appropriate."). Ordinarily the only temporary remedy that would be appropriate would be the issuance of injunctive relief that would prohibit the implementation of the unprecleared

[11] Joint Pretrial Order, *supra* note 1, at 21, Stipulation No. 66.
[12] *See supra* note 1.
[13] *Id.*

redistricting plans. However, unless the State's electoral mechanism and responsibility for conducting congressional and state house of representatives elections are to completely thwarted, this Court is faced with the unwelcome obligation to devise a temporary court-ordered plan in time for the 2012 election cycle. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1975) ("Legislative bodies should not leave their reapportionment tasks to the federal courts; but when those with legislative responsibilities do not respond, or the imminence of a state election makes its impractical for them to do so, it becomes the ' "unwelcome obligation" ' . . . of the federal court to devise and impose a reapportionment plan pending later legislative action.").

When devising a temporary court-ordered plan, there are stricter standards for the federal court to follow: (1) single-member districts should be preferred over multimember districts, *id.* at 540; (2) there should be *de minimis* population deviations, *Chapman v. Meier*, 420 U.S. 1, 26-27 (1975); (3) the court-ordered plan should avoid any taint of discrimination, *Connor v. Finch*, 431 U.S. 407, 415 (1977) ("In such circumstances, the court's task is inevitably an exposed and sensitive one that must be accomplished circumspectly, and in a manner free from any taint of arbitrariness or discrimination.") (internal quotations omitted); (4) the court-ordered plan should incorporate Section 5 judicial and administrative precedents, *McDaniel v. Sanchez*, 452 U.S. 130, 149 (1981) ("Furthermore, in fashioning the plan, the court should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases.") (internal quotations omitted); and, of course, (5) the court-ordered plan should not violate Section 2 of the Voting Rights Act. Thus, if this Court is drawn into the task of formulating a court-ordered plan, the above stricter standards must be incorporated in the Court's temporary redistricting plan.

In summary, the Court is increasingly faced with the prospect of not only granting a Temporary Restraining Order to avoid a clear Section 5 violation, but also with the unwelcome obligation of devising a court-ordered plan to avoid the postponement of the 2012 election cycle. Plaintiffs move this Court to start this process by granting the Motion for a Temporary Restraining Order.

V. CONCLUSION

Having met all of the requisites for a temporary restraining order to remedy a clear violation of Section 5, this Court should grant Plaintiffs' motion and should begin formulating a court-ordered plan for Texas' congressional and state house districts that can be implemented in time for the 2012 election cycle.

DATED: September 27, 2011

Respectfully Submitted,

/s/ Jose Garza
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CAUSE NO. 5:11-CV-361-OLG-JES-XR

CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with counsel for the Defendants and have been informed that Defendants oppose this motion.

_____/s/ Jose Garza_____
Jose Garza

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent by the Court's electronic notification system September 27, 2011, to counsel of record registered with the court to receive same and to those not so registered the foregoing document has been sent by email as agreed by the parties for each of the cases referenced above.

___/s/ Jose Garza_____
Jose Garza

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

SHANNON PEREZ, et al., Plaintiffs and EDDIE BERNICE JOHNSON, et al., TEXAS CONFERENCE OF NAACP BRANCHES, et al., Plaintiff-Intervenors v. STATE OF TEXAS, et al., Defendants	§ § § § § § § § § § § § § §	CIVIL ACTION NO. 11-CA-360 OLG-JES-XR (Lead Case)
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RICK PERRY, et al., Defendants	§	[Consolidated Case]

DECLARATION OF JOAQUIN G. AVILA IN SUPPORT OF PLAINTIFF MALC'S MOTION FOR A TEMPORARY RESTRAINING ORDER

I, Joaquin G. Avila, do declare:

1. I am over the age of 18 and competent to testify to the matters hereto. I make this declaration on personal knowledge.

2. I am licensed to practice in the States of California and Texas. I am counsel of record for Plaintiff MALC in this case.

3. Attached as Exhibit No. 1 is the Letter of Objection issued pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, on September 19, 2011, by the United States Attorney General.

4. Attached as Exhibit 2 is the Declaration of Oscar Villarreal, election administrator for Webb County.

5. Attached as Exhibit 3 is the Declaration of Rogelio Ortiz, election administrator for Cameron County.

If called upon as a witness to testify I would truthfully testify as to the above. I certify and declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 26th day of September, 2011, in King County, Washington.

/s/ Joaquin G. Avila
Joaquin G. Avila

U.S. Department of Justice
Civil Rights Division

TCH:RSB:RPL:LSQ:maf
DJ 166-012-3
2011-2719

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

September 19, 2011

Ann McGeehan, Esq.
Director of Elections
P.O. Box 12060
Austin, Texas 78711-2060

Dear Ms. McGeehan:

This refers to Chapter 1318 (S.B. 100) (2011), which relates to the adoption of certain voting procedures and to certain elections, including procedures relating to the ability of members of the armed services and citizens residing overseas to request and cast absentee ballots, deadlines for declaration of candidacy and dates for certain elections, and to terms of certain elected officials, for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on July 20, 2011.

With regard to Section 5 of the Act, which amends Section 41.0052 of the Election Code, and that portion of Section 51 of the Act, which repeals Section 41.0053 of the Election Code, on August 31, 2011, the Attorney General interposed no objection to the authorization of certain political subdivisions to change the date of their general election date and to the repeal of Section 41.0053 as provided by Chapter 505 (H.B. 1545) (2011). (A copy of our letter is enclosed.) Accordingly, no further determination by the Attorney General is required or appropriate under Section 5 concerning those matters. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.35.

The Attorney General does not interpose any objection to the remaining specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. 28 C.F.R. 51.41.

Chapter 1318 includes provisions that are enabling in nature. Therefore, any changes affecting voting that are adopted pursuant to this legislation will be subject to Section 5 review. 28 C.F.R. 51.15.

Sincerely,

T. Christian Herren, Jr.
Chief, Voting Section

Enclosure

STATE OF TEXAS §
§
COUNTY OF WEBB §

DECLARATION OF OSCAR VILLARREAL

1. "My name is Oscar Villarreal. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I am a resident of Laredo, Webb County, Texas.

3. I am employed by the County of Webb, a political subdivision of the State of Texas, as the Elections Administrator for the WEBB COUNTY ELECTIONS DEPARTMENT.

4. The WEBB COUNTY ELECTIONS DEPARTMENT is responsible for voter registration activities and election operations throughout Webb County which presently includes Fifty Nine (59) voting precincts located within Webb County, Eight (8) political subdivisions which include, Three (3) Independent School Districts, Three (3) Cities and approximately One Hundred and Six Thousand (106,000) registered voters.

5. It is my responsibility to ensure that elections in Webb County are conducted fairly and efficiently, and with as little confusion and disruption to the voters of the county as possible.

6. Every redistricting of State and local election districts brings new challenges to the Elections Department. Voting precincts need to be adjusted to accommodate new district boundaries with enough time to educate the public, notify voters of these changes, and mail out new voter registration certificates to every registered voter in the county pursuant to the Texas Election Code.

7. In Texas any state plan on redistricting requires approval (preclearance) pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c by the United States Attorney General through the Department of Justice's Voting Section or from the United States District Court for the District of Columbia, a process that often takes months to complete.

8. Nevertheless, because of state imposed deadlines, Webb County has no other option but to align new voting precincts to accommodate the plans as developed by the State for Texas House and Texas Congressional Districts and we have begun the process of identifying voters in each precinct and district so that they can be informed as to which district and voting precinct they will reside in.

9. The filing period for candidates, who will also be affected by any delays in this process, begins November 12, 2011 and ends December 12, 2011. Both Political Parties' Primaries will take place on March 06, 2012. As you can see by these deadlines, time is of the essence.

10. The Department of Justice has not approved the Texas Congressional or State Legislative redistricting plans and therefore, we have no legal plan upon which to base our voting precincts.

11. This delay in consideration of a valid and legal congressional and state legislative redistricting plan will disrupt the election process and cause unnecessary voter confusion that will impair the ability of voters to exercise their right to vote and ultimately may lead to the disenfranchisement of the very voters this process is supposed to protect.

12. Ideally, all state redistricting plans, including congressional redistricting plans should be finalized and receive approval pursuant to Section 5 of the Voting Rights Act, well before October, 2011 in order to avoid any serious disruption of the election process.

13. Therefore I would urge that a congressional and legislative plan be finalized by this Court and ask that this Court begin the process necessary to meet this goal as soon as is practicable.

I declare under penalty of perjury that all the foregoing is based on my personal knowledge and belief and is true and correct to the best of my knowledge.

Oscar Villarreal, CERA
Elections Administrator
Webb County, Texas

STATE OF TEXAS §
§
COUNTY OF CAMERON §

DECLARATION OF ROGELIO ORTIZ

1. "My name is Rogelio Ortiz. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I am a resident of Cameron County, Texas.

3. I am employed by Cameron County, a political subdivision of the State of Texas, as the Elections Administrator for the CAMERON COUNTY ELECTIONS DEPARTMENT.

4. The CAMERON COUNTY ELECTIONS DEPARTMENT is responsible for voter registration activities and election operations throughout Cameron County which includes 98 voting precincts in Cameron County, 26 political subdivisions, 11 Independent School Districts, 16 Cities and approximately 20 misc. jurisdictions such as colleges, irrigation districts, navigation districts, m.u.d. districts, drainage districts, and other special districts. We have approximately 172,000 registered voters in Cameron County.

5. It is my responsibility to insure that elections in Cameron County are conducted fairly and efficiently, including trying to make sure there is as little confusion and disruption as possible.

6. Every redistricting of State and local election districts brings new challenges to the Elections Department. Voting precincts need to be adjusted to accommodate the new district boundaries with enough time to educate the public and notify voters of the changes.

7. In Texas any state plan on redistricting requires approval pursuant (preclearance) pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c by the United States Attorney General through the Department of Justice's Voting Section or from the United States District Court for the District of Columbia, a process that often takes months to complete.

8. The filing period for candidates begins on November 12 through December 12, 2011 and the Party Primaries are in March 6, 2012.

9. The Department of Justice has not approved the Texas Congressional or State Legislative redistricting plans and therefore, we have no legal plan upon which to base our voting precincts. . Nevertheless, because of state imposed deadlines, Cameron County has no other option but to align new voting precincts to accommodate the plans as developed by the State for Texas House and Texas Congressional Districts and we have begun that process so that voters can be identified for each precinct and district and so that they can be informed as to which district and voting precinct they reside in

10. This delay in consideration of a valid and legal congressional and state legislative redistricting plan will disrupt the election process and cause unnecessary voter confusion that will impair the ability of voters to exercise their right to vote.

11. Ideally, all state redistricting plans, including congressional redistricting plans should be finalized and receive approval pursuant to Section 5 of the Voting Rights Act, well before October, 2011 in order to avoid any serious disruption of the election process.

12. Therefore I would urge that a congressional and legislative plan be finalized by this Court and would ask that this Court begin the process necessary to meet this goal as soon as is practicable.

I declare under penalty of perjury that all the foregoing is based on my personal knowledge and belief and is true and correct to the best of my knowledge.

ROGELIO ORTIZ
CAMERON COUNTY ELECTIONS ADMINISTRATOR

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

SHANNON PEREZ, et al., Plaintiffs and EDDIE BERNICE JOHNSON, et al., TEXAS CONFERENCE OF NAACP BRANCHES, et al., Plaintiff-Intervenors v. STATE OF TEXAS, et al., Defendants	§ § § § § § § § § § § § §	CIVIL ACTION NO. 11-CA-360 OLG-JES-XR (Lead Case)
MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES (MALC), Plaintiff and THE HONORABLE HENRY CUELLAR, Member of Congress, CD 28, and THE TEXAS DEMOCRATIC PARTY et al. and LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) et al., Plaintiff-Intervenors v. STATE OF TEXAS, et al., Defendants	§ §	CIVIL ACTION NO. 11-CA-361 OLG-JES-XR [Consolidated Case]

TEXAS LATINO REDISTRICTING TASK FORCE et al., Plaintiffs	§	
v.	§	CIVIL ACTION NO. 11-CA-490 OLG-JES-XR
RICK PERRY, in his official capacity As Governor of the State of Texas, Defendants	§	[Consolidated Case]

MARGARITA QUESADA, et al., Plaintiffs	§	
v.	§	CIVIL ACTION NO. 11-CA-592 OLG-JES-XR
RICK PERRY, et al., Defendants	§	[Consolidated Case]

JOHN T. MORRIS, Plaintiff	§	
v.	§	CIVIL ACTION NO. 11-CA-615 OLG-JES-XR
STATE OF TEXAS, et al., Defendants	§	[Consolidated Case]

EDDIE RODRIGUEZ, et al., Plaintiffs	§	
v.	§	CIVIL ACTION NO. 11-CA-635 OLG-JES-XR
RICK PERRY, et al., Defendants	§	[Consolidated Case]

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER

VOTING RIGHTS ACTION

TO DEFENDANTS:

YOU (AND EACH OF YOU) ARE ORDERED TO SHOW CAUSE at_____ on _____ or as soon thereafter as counsel may be heard in the courtroom of the Honorable_____, located at _____, TX, _____, why you, your agents, servants, employees, and those in active concert or participation with you or them, should not be restrained and enjoined pending trial of this action from undertaking any steps to implement the new redistricting plan for the Texas House of Representatives established by House Bill 150 and the new redistricting plan for the State of Texas established by Senate Bill 4 until the congressional and state house redistricting plans have been approved pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c.

The Court finds that Plaintiff has met its burden of demonstrating a probability of success on the merits, that Plaintiff is likely to suffer irreparable harm in the absence of immediate equitable relief, that the balance of equities tip in Plaintiff's favor, and that an injunction is in the public interest. In this action, there is no question that the state of Texas is subject to the Section 5 preclearance requirements, that the new congressional and state house redistricting plans constitute voting changes subject to Section 5 review, and that the new congressional and state house redistricting plans have not received the requisite Section 5 approval. Absent such approval, injunctive relief is appropriate.

PENDING HEARING on the above Order to Show Cause, you, or your agents, servants, employees, and all those in active concert or participation with you or them, ARE RESTRAINED AND ENJOINED from taking any steps to implement the new congressional and state house redistricting plans until these plans have been approved pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c.

The requirement of an undertaking is waived. This Order to Show Cause and supporting papers must be served on Defendants no later than_____, and proof of service shall be filed no later than_____. Any response or opposition to this Order to Show Cause must be filed and served on Plaintiff's counsel no later than _____. Any reply to Defendants' response or opposition must be filed and served on Defendants' counsel no later than_____.

This Temporary Restraining Order shall continue until a duly designated Three Judge Court is convened and rules on Plaintiff's request for preliminary injunctive relief.

DATED:_____, 2011.

_____
Honorable……
U.S. District Court Judge

Presented by:

_____/s/ Jose Garza_____

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