

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS, et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action

Lead Case No.:

3:21-CV-00259-DCG-JES-JVB

ROSALINDA RAMOS ABUABARA, et al.,

Plaintiffs,

v.

JANE NELSON, et al.,

Defendants.<sup>1</sup>

Consolidated Case No.:

1:21-CV-00965-RP-JES-JVB

**ABUABARA PLAINTIFFS' UNOPPOSED MOTION  
FOR LEAVE TO FILE A SUPPLEMENTAL COMPLAINT**

Plaintiffs Rosalinda Ramos Abuabara, Akilah Bacy, Orlando Flores, Marilena Garza, Cecilia Gonzales, Agustin Loreda, Cinia Montoya, Ana Ramón, Jana Lynne Sanchez, Jerry Shafer, Debbie Lynn Solis, Angel Ulloa, Mary Uribe, and Luz Maria Moreno (the “Abuabara Plaintiffs”), by and through their undersigned counsel, respectfully move this Court for leave to file a Supplemental Complaint under Federal Rule of Civil Procedure 15(d). The proposed Supplemental

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<sup>1</sup> Jane Nelson replaced John Scott as Texas Secretary of State on January 5, 2023. *See* Fed. R. Civ. P. 25(d).

Complaint is attached as **Exhibit A**. Counsel for Defendants have stated that they do not oppose this Motion.

The Abuabara Plaintiffs seek to file the Supplemental Complaint because House Bill 1—the statute by which the state House map challenged in the Third Amended Complaint was adopted—is no longer technically in effect. Instead, the more recently-passed House Bill 1000 adopted the current operative state House map. This is a purely formal change; the districts enacted by House Bill 1000 are identical to those enacted by House Bill 1. And the Abuabara Plaintiffs’ challenge to those districts is likewise identical. But to dispel any possible doubt, the Abuabara Plaintiffs seek leave to file a Supplemental Complaint that incorporates their existing allegations to assert a legal challenge against House Bill 1000 identical to the challenge previously asserted against House Bill 1.

### **BACKGROUND**

The Texas Constitution requires the Legislature to apportion state legislative districts in “the first regular session” after the publishing of the results of the federal census. Tex. Const. art. 3, § 28. But in 2021, the results of the U.S. census were delayed. The Legislature therefore did not receive the necessary data from the Census Bureau until after the last regularly scheduled session. House Bill 1, which enacted a district map for the Texas House of Representatives, was accordingly passed during a subsequent special session of the Legislature. *See* HB1, 87th 3rd C.S., Legislative Reference Library of Texas, *available at* <https://lrl.texas.gov/legis/billSearch/BillDetails.cfm?legSession=87-3&billtypeDetail=HB&billNumberDetail=1&billSuffixDetail=> (last accessed Apr. 4, 2024). House Bill 1 was used as the district map for the Texas House of Representatives in the 2022 election.

After House Bill 1 was passed, two lawmakers sued in state court, arguing that passing House Bill 1 in a special session violated the plain text of Article 3, § 28 of the Texas Constitution, which requires redistricting bills to be passed in the “first *regular* session” following receipt of census data (emphasis added). *See Abbott v. Mexican Am. Leg. Caucus*, 674 S.W.3d 681, 687 (Tex. 2022). To address that concern, the Legislature again took up state House and Senate redistricting during the 2023 regular session.

The Legislature passed House Bill 1000 during regular session on May 19, 2023, and Governor Abbott signed it into law on June 12, 2023. House Bill 1000 enacts exactly the same districts for the Texas House of Representatives that were enacted by House Bill 1, and explicitly incorporates House Bill 1 by reference, providing that “[t]he districts used to elect members of the Texas House of Representatives in 2022, established by [House Bill 1] are hereby ratified and adopted as the districts used to elect members of the Texas House of Representatives.”

The Abuabara Plaintiffs filed their operative Third Amended Complaint on October 13, 2022, Dkt. 613, eight months before House Bill 1000 became law. The Third Amended Complaint alleges that the district boundaries created by House Bill 1—which have now been re-enacted by House Bill 1000—combine to “crack” and “pack” minority voters, resulting in the dilution of the electoral strength of the state’s Latino and Black residents, in violation of Section 2 of the Voting Rights Act. *Id.* at 61.

The Abuabara Plaintiffs seek to file a Supplemental Complaint to expressly challenge House Bill 1000, by incorporating the allegations previously made about House Bill 1 into a challenge to the identical districts enacted by House Bill 1000.

## ARGUMENT

Federal Rule of Civil Procedure 15(d) allows the Court to “permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” “The purpose of Rule 15(d) ‘is to promote as complete an adjudication of the dispute between the parties as is possible.’” *Enniss Family Realty I, LLC v. Schneider Nat. Carriers, Inc.*, 916 F. Supp. 2d 702, 717 (S.D. Miss. 2013) (quoting 6A Charles Alan Wright et al., *Federal Practice and Procedure* § 1504 (3d ed.)). In addition to “the obvious and reasonable requirement that the supplementation have ‘some relation’ to what is sought to be supplemented,” courts in this Circuit consider the “totality of circumstances” when deciding whether to allow supplementation. *Jackson Women’s Health Org. v. Dobbs*, 379 F. Supp. 3d 549, 551 (S.D. Miss. 2019) (internal quotation marks omitted). The “totality of the circumstances” analysis under Rule 15(d) is similar to the analysis of a motion to amend under Rule 15(a). Courts consider factors such as “(1) undue delay, (2) bad faith or dilatory motive by the movant, (3) repeated failure to cure deficiencies by previous amendments, (4) undue prejudice to the opposing party, or (5) futility of amendment.” *Chemetron Corp. v. Business Funds, Inc.*, 682 F.2d 1149, 1194 (5th Cir. 1982), *rev’d on other grounds*, 460 U.S. 1007 (1983); *see also Lewis v. Knutson*, 699 F.2d 230, 239 (5th Cir. 1983) (“[T]he discretion exercised in deciding whether to grant leave to amend is similar to that for leave to file a supplemental pleading.”).

Here, the Abuabara Plaintiffs’ proposed Supplemental Complaint sets forth events—the enactment of House Bill 1000—that happened after the date of the currently-operative Third Amended Complaint. The Abuabara Plaintiffs filed their Third Amended Complaint on October 13, 2022. Dkt. 613. House Bill 1000 was not signed into law until June 12, 2023, and thus could not have been accounted for in the Third Amended Complaint.

The Supplemental Complaint is also directly related to the existing pleadings. It asserts a challenge against legislative districts enacted by House Bill 1000 that are identical to those enacted by House Bill 1, based on allegations identical to the allegations made in the Third Amended Complaint. *See Jackson Women's Health*, 379 F. Supp. 3d at 552 (allowing plaintiffs to file supplemental complaint challenging a subsequent statutory amendment where the “supplemental claims pose the same legal question as the original suit”).

The totality of the circumstances supports allowing the Supplemental Complaint. As explained above, the Supplemental Complaint was made necessary by an intervening action of the Legislature, not because of any undue delay, dilatory motive, or failure by Plaintiffs. And because the claims raised by the Supplemental Complaint are substantively identical to claims in the Third Amended Complaint, there will be no prejudice to any party, and the amendment is not futile. The Supplemental Complaint does not alter the substance of Plaintiffs' claims, because the substance of House Bill 1000 is identical to House Bill 1. The Supplemental Complaint thus applies the same claims to the same map as the Third Amended Complaint. The facts and legal arguments developed thus far in this litigation therefore apply equally to House Bill 1000 as well as House Bill 1, and no additional discovery will be necessary as a result of this amendment. There is thus no need for a continuance to cure any prejudice, especially since no trial date has been set and there are still several discovery issues outstanding.

### **CONCLUSION**

The Court should grant the Abuabara Plaintiffs' unopposed motion for leave to file the proposed Supplemental Complaint.

Dated: April 9, 2024

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Respectfully submitted,

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**CERTIFICATE OF CONFERENCE**

Counsel for the Plaintiffs conferred with counsel for the Defendants in a good-faith attempt to resolve the subject matter of this Motion, and counsel for the Defendants indicated that they do not oppose the Motion.

/s/ David R. Fox

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on April 9, 2024, and that all counsel of record were served by CM/ECF.

/s/ David R. Fox

# **Exhibit A**



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BACY, ORLANDO FLORES, MARILENA  
GARZA, CECILIA GONZALES, AGUSTIN  
LOREDO, CINIA MONTOYA, ANA RAMÓN,  
JANA LYNNE SANCHEZ, JERRY SHAFER,  
DEBBIE LYNN SOLIS, ANGEL ULLOA, MARY  
URIBE, and LUZ MORENO,

Plaintiffs,

v.

JANE NELSON, in her official capacity as Texas  
Secretary of State, and GREGORY WAYNE  
ABBOTT, in his official capacity as the Governor  
of Texas,

Defendants.<sup>1</sup>

Consolidated Case No.:

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<sup>1</sup> Jane Nelson replaced John Scott as Texas Secretary of State on January 5, 2023. *See* Fed. R. Civ. P. 25(d).

**[PROPOSED] SUPPLEMENTAL COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Rosalinda Ramos Abuabara, Akilah Bacy, Orlando Flores, Marilena Garza, Cecilia Gonzales, Agustin Loredó, Cinia Montoya, Ana Ramón, Jana Lynne Sanchez, Jerry Schafer, Debbie Lynn Solis, Angel Ulloa, Mary Uribe, and Luz Moreno file this Supplemental Complaint for Declaratory and Injunctive Relief against Defendants Jane Nelson in her capacity as Texas Secretary of State and Gregory Wayne Abbott in his capacity as Governor of the State of Texas, and allege as follows:

1. Plaintiffs' operative Third Amended Complaint in the above-captioned action was filed on October 13, 2022. The Third Amended Complaint alleges two causes of action: Count I alleges that Senate Bill 6, the implementing legislation for Texas's congressional district map, has the effect of denying Black and Latino voters an equal opportunity to participate in the political process and to elect candidates of their choice, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. Count II alleges that House Bill 1, the implementing legislation for Texas's State House of Representatives district map, has the effect has the effect of denying Black and Latino voters an equal opportunity to participate in the political process and to elect candidates of their choice, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

2. The allegations in Plaintiffs' Third Amended Complaint are hereby incorporated by reference.

3. House Bill 1, which is challenged in Count II of Plaintiffs' Third Amended Complaint, was enacted on October 25, 2021, and was used as the district map for the Texas House of Representatives in the 2022 election.

4. The current operative state House map was enacted by House Bill 1000, which adopted the same districts previously enacted by House Bill 1.

5. The Texas Constitution requires the Legislature to apportion state legislative districts in “the first regular session” after the publishing of the results of the federal census. Tex. Const. art. 3, § 28. In 2021, the census results were delayed until after the end of the last regularly scheduled legislative session. House Bill 1 was therefore passed during a subsequent special session.

6. Two lawmakers sued in state court, arguing that passing House Bill 1 during a special session violated this requirement of the Texas Constitution. To address this concern, the Legislature took up House redistricting again during the 2023 regular session.

7. House Bill 1000 explicitly incorporates House Bill 1 by reference, providing that “[t]he districts used to elect members of the Texas House of Representatives in 2022, established by [House Bill 1] are hereby ratified and adopted as the districts used to elect members of the Texas House of Representatives.”

8. During consideration of House Bill 1000, Representative Yvonne Davis proposed two amendments which would have created two additional majority-minority districts, one in Bell County and another in Smith and Gregg counties. Both amendments failed.

9. House Bill 1000 passed the House on April 26, 2023. The Senate approved it on May 19, and Governor Abbott signed it into law on June 12.

10. All allegations relating to the deficiencies in House Bill 1 in Plaintiffs’ Third Amended Complaint, including in Count II of the Third Amended Complaint, apply equally to the substantively identical House Bill 1000.

#### **CLAIM FOR RELIEF**

11. Plaintiffs incorporate by reference all prior paragraphs of this Supplemental Complaint, as well as the allegations in the Third Amended Complaint, as though fully set forth herein.

12. Section 2 of the Voting Rights Act prohibits the enforcement of any voting qualification or prerequisite to voting or any standard, practice, or procedure that results in the denial or abridgement of the right of any U.S. citizen to vote on account of race, color, or membership in a language minority group. 52 U.S.C. § 10301(a).

13. The district boundaries created by House Bill 1000—which are identical to the districts adopted by House Bill 1—combine to “crack” and “pack” Latino Texans, resulting in the dilution of the electoral strength of the state’s Latino and Black residents, in violation of Section 2 of the Voting Rights Act.

14. Latino and Black Texans in Tarrant County are sufficiently numerous and geographically compact to constitute a majority of eligible voters in one additional House district, for a total of five such districts in that county.

15. Latino voters in Harris County are sufficiently numerous and geographically compact to allow for an additional district in the county in which a majority of eligible voters are Latino.

16. In sum, under Section 2 of the Voting Rights Act, the Texas legislature was required (a) to create an additional district in Tarrant County in which Black and Latino Texans together have a reasonable opportunity to elect their candidates of choice, and (b) to create an additional district in Harris County in which Latino Texans have a reasonable opportunity to elect their candidates of choice. Not one of these additional districts would reduce the number of minority opportunity districts in their respective regions or in the enacted map as a whole.

17. Black and Latino voters in Tarrant County, and Latino voters in Harris County, are politically cohesive, and elections in the state reveal a clear pattern of racially polarized voting that allows the bloc of white voters usually to defeat minority-preferred candidates.

18. The totality of the circumstances establishes that the House map established by House Bill 1000 has the effect of denying Black and Latino voters an equal opportunity to participate in the political process and to elect candidates of their choice, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, for the same reason that House Bill 1 did.

19. By engaging in the acts and omissions alleged herein, Defendants have acted and continue to act to deny Plaintiffs' rights guaranteed to them by Section 2 of the Voting Rights Act. Defendants will continue to violate those rights absent relief granted by this Court.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that this Court:

- a. Declare that House Bill 1000 violates Section 2 of the Voting Rights Act.
- b. Order the adoption of a valid House redistricting plan that includes:
  - i. An additional district in Tarrant County in which Black and Latino voters have a reasonable opportunity to elect their candidates of choice, without reducing the number of minority opportunity districts currently in the county; and
  - ii. An additional district in the southeastern portion of Harris County in which Latino voters have a reasonable opportunity to elect their candidates of choice, without reducing the number of minority opportunity districts currently in the region.
- c. Enjoin Defendants, as well as their agents and successors in office, from enforcing or giving any effect to the boundaries of the state House districts as drawn in House Bill 1000, including an injunction barring Defendants from conducting any further House elections under the current map.
- d. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to determine and order a valid plan for new state House districts in the State of Texas; and

- e. Grant such other or further relief the Court deems to be appropriate, including but not limited to an award of Plaintiffs' attorneys' fees and reasonable costs.

Dated: April 9, 2024

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Respectfully submitted,

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