

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

MEXICAN AMERICAN LEGISLATIVE	§	
CAUCUS, TEXAS HOUSE OF	§	
REPRESENTATIVES (MALC)	§	
PLAINTIFF	§	
	§	
v.	§	CAUSE NO. 7:11-cv-00144
	§	
STATE OF TEXAS, et al.,	§	
DEFENDANTS	§	

**PLAINTIFF’S MEMORANDUM OF FACTS AND LAW IN SUPPORT OF MOTION TO
REMAND TO STATE COURT**

Plaintiff files this memorandum of facts and law in support of its Motion to Remand to State Court. Defendants improperly removed Plaintiff’s Original Petition on May 13, 2011. Since Plaintiff seeks relief pursuant only to Texas state constitutional and statutory protections, this Court lacks jurisdiction to adjudicate Plaintiff’s action.

STANDARDS FOR REMOVAL

The removal statute, *28 U.S.C. § 1441(a)*, provides:

[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

Federal courts have original jurisdiction over any civil action founded on a claim or right arising under the Constitution, treaties or laws of the United States, *i.e.* those actions presenting a federal question. *28 U.S.C. § 1441(b)*. A federal question exists “if there appears on the face of the complaint some substantial, disputed question of federal law.” *Carpenter v. Wichita Falls Independent School District*, 44 F. 3d 362, 366 (citing *Franchise Tax Board v. Constr. Laborers*

Vacation Trust, 463 U.S. 1, 12 (1983). The party that seeks removal has the burden of establishing that federal jurisdiction exists and that removal was proper. *Manguno v. Prudential Property & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002) (citation omitted). Courts must strictly construe removal statutes in favor of remand and against removal. *Bosky v. Kroger Tex., L.P.*, 288 F.3d 208, 211 (5th Cir. 2002). "[A]ny doubt as to the propriety of removal should be resolved in favor of remand." *In re Hot-Hed Inc.*, 477 F.3d 320, 323 (5th Cir. 2007); *See also: Centaurus Woodglan Village, LLC v. Lexington Insurance Company*, ___F. Supp. ___ (S.D. Tex. – Houston, 2011), 2011 U.S. Dist. LEXIS 25946.

FACTS

Plaintiff filed this redistricting action in State District Court in Hidalgo County on April 5, 2011. Plaintiff's Original Petition alleged four separate causes of action: 1) violation of equal protection provision of the Texas Constitution, Article I, § 3; 2) violation of right to be free from discrimination as provided by the Texas Constitution, Article I, § 3a; 3) violation of protections provided by the Texas Constitution, Article VI, § 2(c); and violation of § 106.001 of the Texas Civil Practice and Remedies Code. No federal rights were implicated by the facts alleged or the cause of actions explicitly asserted. Although not required to do so under Texas pleadings rules, Plaintiff cited to some United States Supreme Court decisions to inform the court of the contours of State Constitutional protections, since Texas courts often look to federal law to establish the base for State Constitutional protections. *See: Perry v. Del Rio*, 66 S.W.3d 239 (Tex. 2001); *In Re McLean*, 725 S.W.2d 696, 698 n. 100 (Tex. 1987). In addition, Plaintiff's citation to *Avery v. Midland County*, 390 U.S. 474 (1968) was incomplete. Plaintiff should have more accurately cited: *Avery v. Midland County*, 406 S.W. 2d 422, 428-9 (Tex. 1968) *overruled on other ground*,

390 U.S. 474, 478 (1968) (county commissioners court redistricting scheme violated Tex. Const. art. I, § 3).

The Defendants allege in their removal notice that Plaintiffs seek to enforce United States Constitutional protections, seek to adjudicate substantial disputed questions of federal law and that Plaintiff's claims are completely preempted under federal law. The Defendants are wrong.

ARGUMENT AND AUTHORITY

The Defendants assert that Plaintiff's Original Petition, in spite of the fact that it clearly and unambiguously asserts only State Constitutional and statutory causes of action, is an attempt to have a state district court enforce federal constitutional protections. Central to the Defendants' assertions is that the Texas Constitution does not protect against malapportioned legislative and congressional districts. Although it is true that the 14th Amendment to the United States Constitution requires that redistricting plans comply with the principle of one person, one vote, the Texas Constitution also protects against population disparities between districts that fail to establish a rational basis for the disparity. *Avery v. Midland County*, 406 S.W. 2d 422, 428-9 (Tex. 1968) *overruled on other ground*, 390 U.S. 474, 478 (county commissioners court redistricting scheme violated Tex. Const. art. I, § 3). In reviewing and affirming the district court's determination that the population variance of county commissioner precincts lines violated art. I, § 3 of the Texas Constitution the Texas Supreme Court determined that:

“As we have said, equal rights and equal protection of laws require equality in political rights and there may be circumstances under which equality in population of political subdivisions electing representatives to an overall governing body is essential to equality in voting rights....

We agree with the holding of the trial court that there is obvious arbitrariness in the current districting order here under attack because of the patent malapportionment of the commissioners precincts of Midland County. The judgment

findings of the trial court show the absence of any rational basis therefor.”

Id.

More recently, Texas courts have accepted that the Texas ERA (art. I, § 3a) is an appropriate vehicle to challenge legislative reapportionment. *Terrazas v. Ramirez*, 829 S.W.2d 712 (Tex. 1991). The Texas Constitution clearly provides an appropriate mechanism for challenging Texas legislative redistricting.

The Defendants also assert that with regard to Congressional redistricting, only federal laws in federal courts are appropriate to challenges to the legality of such redistricting plans. The Courts disagree. The United States Supreme Court has on several occasions determined that even with regard to Congressional redistricting: “The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been encouraged.” *Scott v. Germano*, 381 U.S. 407, 409 (1965). In *Grove v. Emison*, a case involving Congressional redistricting, the Supreme Court said:

“In the reapportionment context, the Court has required federal judges to defer consideration of disputes involving redistricting, where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself.”

507 U.S. 25, 33 (1993).

Texas federal courts, in cases involving redistricting of congressional districts, have followed this tenet. In *Sessions v. Perry*, 298 F. Supp. 2d 451, 458 (W.D. Tex. 2004) the federal court reluctantly accepted responsibility for hearing a challenge to the State’s congressional districts only after it had deferred to the state courts and the state court had failed to act. The Texas Supreme Court has recognized the State court’s responsibilities with regard to

redistricting, even as to Congressional redistricting. *Perry v. Del Rio*, 66 S.W. 3d 239, 243 (Tex. 2001)(“It therefore falls to the courts – first the Texas courts and then those of the United States – to reconstruct the State’s congressional districts. The federal courts must defer, but only for a reasonable time,”). The Texas Attorney General was counsel in all of these cases and is well aware that the congressional redistricting is not in the exclusive domain of the federal courts.

ATTORNEY’S FEES

This case was inappropriately removed and should be remanded to the State District Court for Hidalgo County. In light of the clearly established legal authority for review of redistricting in the state courts and the participation of the Texas Attorney General in those proceedings, the removal of this action was only for delay and to burden the Plaintiffs with additional costs of litigation. The removal was unreasonable and attorney’s fees and costs should be awarded. Plaintiff therefore submits the affidavits of their counsel, Jose Garza and Joaquin G. Avila, establishing the costs and fees associated only with responding to the removal of this action and ask this Court to award attorney’s fees and costs in the amount of \$15,083.75.

CONCLUSION

This case was wrongfully removed and should be remanded with all due speed to avoid delay in the adjudication of these important Texas Constitutional claims and to avoid unnecessary disruption of the 2012 election process.

DATED: June 2, 2011

Respectfully submitted,

/s/ Jose Garza
Jose Garza
State Bar No. 07731950
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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 and United States certified mail return receipt requested on June 2, 2011, to:

Greg Abbott, Attorney General of Texas
Daniel T. Hodge, 1st Assistant Attorney General
Bill Cobb, Deputy Attorney General for Civil Litigation
David C. Mattax, Director of Defense Litigation
David Schenck, Deputy Attorney General of Legal Counsel, and Attorney in Charge
J. Reed Clay, Jr. Special Assistant and Senior Counsel to the Attorney General
Angela V. Colmenero, Assistant Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711

/s/ Jose Garza

Jose Garza

EXHIBIT NO. 1

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STATE OF TEXAS, et al.,	§	
DEFENDANTS	§	

**DECLARATION OF JOSE GARZA IN SUPPORT OF REQUEST
FOR ATTORNEY'S FEES**

Background and Prevailing Party

1. I am lead-counsel for Plaintiffs in the above-styled matter. My resume is attached hereto as Attachment No. 1. I am presenting this declaration in support of Plaintiff’s request for attorney’s fees and costs associated with the removal of this action from the State District Court of Hidalgo County. Plaintiff has shown that the removal was not reasonable in this action and are entitled to attorney’s fees and costs as authorized by the 28 U.S.C.S § 1447(c). Specifically, Plaintiff and its attorneys, Jose Garza, and Joaquin Avila, presented pleadings and argument to this Court regarding the failure of the Defendants, State of Texas et al.’s to demonstrate the jurisdictional basis for removal of this action.

Time

2. My time in this case is kept contemporaneously with the work performed and recorded on a daily basis. For the time period ending May 27, 2011 I devoted a total of 35.35 hours to research and prepare the motion to remand and address the matters raised by the Defendants in their removal. Mr. Martin Golando and four year attorney associated with Mr. Garza’s firm devoted 1.5 hours doing cite checks and reviewing the Defendants’ removal pleadings and this motion. Mr. Avila devoted an additional 3.4 hours reviewing pleadings, and researching the issues. In addition, Plaintiff estimates that at least an additional 3

hours will be spent by Jose Garza to respond to Defendant's reply to the motion to remand. However, in exercising billing judgment I am discounting 5.7 hours from the time Jose Garza devoted to this issue (including the estimate for responding to Defendants' reply), representing 15% of his total, to account for any potential duplication that may have occurred in time period involved in the presentation of Plaintiff's motion. Therefore, I am requesting compensation for a total of 32.65 hours of Jose Garza's total hours spent on this issue and 3.4 hours devoted to this issue by Mr. Avila. I have attached the time records that I maintained in this action as Attachment No. 2.

3. There was no unnecessary duplication of efforts. My co-counsel on this case, Joaquin Avila, and I carefully coordinated our efforts so as to avoid unnecessary duplication. Moreover, we consulted with each other in order to better coordinate the development of the case. The amount of time expended in this case was necessary because it presented several difficult questions of law. The time spent on this case represents the minimum hours necessary for an adequate preparation of pleadings and presentation to the court. Because of my thirty-one years of experience in Voting Rights cases, I did not spend any unnecessary time on issues and evidence developed in this case, and I did not spend time on matters that were not relevant to the presentation of this motion.

Market Rate

4. The State of Texas stipulated that in 2001 the prevailing market rate for Jose Garza on voting rights cases was \$325.00 per hour. Eight and a half years later Ms. Nina Perales, litigation director for the Mexican American Legal Defense and Educational Fund (MALDEF) testified. in a recent case that the prevailing market rate for Jose Garza was \$375.00 per hour. More than two years ago United States District Court for the Western District of Texas made a fee award to Jose Garza based on a rate of \$350.00 per hour. Based on my knowledge of the prevailing market rates, and my experience with court awards in voting rights cases, I agree with Ms. Perales that my current rate for this case is \$375.00. Therefore, Plaintiffs' fee request of a rate of \$375.00 per hour for Mr. Garza. In addition, Mr. Martin Golando, a four year attorney

associated with Mr. Garza's firm, is billed at a rate of \$250.00 per hour. As detailed in Mr. Avila declaration, he has a market rate of \$ 725.00 per hour, which is reasonable for this case.

Lodestar

5. In determining the Lodestar a court should usually consider the actual hours devoted to the case and the market hourly rate for the lawyer in question. I have devoted 38.35 hours (including the estimated time for response to Defendants' reply to this motion) to the successful prosecution of this motion and am requesting compensation for 32.65 of those hours. Ms. Perales and I have testified that the prevailing market rate for Jose Garza for this case is \$375.00 per hour. Therefore, the lodestar requested in this case for Jose Garza is \$12,243.75 (32.65hrs. @ \$375.00 = \$12,243.75). The lodestar requested on this motion for Mr. Golando is \$375.00 (1.5hrs. @ \$250.00 = \$375.00). Mr. Joaquin G. Avila has testified that his prevailing market rate is \$725.00 per hour. Therefore, the lodestar requested in this case for Joaquin Avila is \$ 2,465.00 (3.4hrs @ \$725.00 = \$2,465.00). The total requested in attorney's fees on the removal of this action is \$15,083.75.

Johnson Factors

6. *Preclusion of Other Employment.* My work in this litigation restricted the time available for pursuit of other litigation during the period of activity in this case. Because of the extensive work required in a time-compressed period of time, I was unable to proceed with work on other cases.

7. *Time Limitation Imposed by Circumstances.* The time limitations in this case were imposed by pending election schedules and by the failure of Texas Legislature to adopt a valid congressional redistricting plan in a timely manner. By removing this case at the very moment that preliminary action is required on congressional redistricting, the Defendants have prevented Plaintiff from moving forward with their litigation responsibilities.

8. *Undesirability of the Case.* This case was filed pursuant to the Voting Rights Act, 42 U.S.C. §1973c. Counsel for Plaintiff represents MALC. This case is very undesirable because the expedited trial schedule required by the upcoming election schedules and multiple forums currently in play, place unusual time constraints on the development and preparation of the case and because of the specialized nature of the actions. Moreover, the case requires significant time and resources to properly prosecute, and recovery of a fee and expenses are entirely contingent on success.

9. *Experience and Expertise.* My experience has included participation in federal and state redistricting litigation, extensive advocacy in state and federal administrative hearings, and preparation of pleadings, briefs and evidence for cases in both state and federal courts. I am or have been counsel in numerous voting rights cases including the following challenges under the Fourteenth Amendment, the Voting Rights Act and the Texas Constitution: *Alonzo v. Jones*, C-81-277 (S.D. Tex. 1981)[Lead counsel in a successful action challenging the at-large election system for the City of Corpus Christi, Texas under the newly amended Voting Rights Act.]; *Comm. Court of Medina County v. United States*, 719 F. 2nd 1179 (D.C. 1983)[Lead counsel representing minority defendant-intervener opposing Medina County's gerrymander redistricting plan in a preclearance action under Section 5 of the Voting Rights Act. Successfully overturned District Court's failure to award attorneys fees.]; *Lockhart v. United States*, 102 S. Ct. 988 (1983)[Lead counsel representing minority defendant-intervener opposing City of Lockhart's preclearance proceedings before the United States District Court for the District of Columbia and before the United States Supreme Court.]; *Terrazas v. Clements*, 537 F. Supp. 514 (N.D. Tex. 1982)[Co-counsel in successful challenge to States redistricting plans for Bexar and El Paso Counties.]; *Gomez v. City of Watsonville*, 863 F. 2nd 1407 (9th Cir. 1988)[Co-counsel in successful challenge to the at-large election system for the City of Watsonville, California.];

Overton and Calderon v. City of Austin, 871 F. 2nd 529 (5th Cir. 1989)[Lead counsel for Mexican American plaintiffs in challenge to at-large election system for the City of Austin.]; *Sanchez v. Bond*, 875 F. 2nd 1488 (10th Cir. 1989)[Lead counsel in challenge to the election structure for Saguache County, Colorado Commissioners.]; *Mena v. Richards*, C-454-91-F (332nd Judicial District, Hidalgo County, Texas, 1992)[Co-counsel in successful challenge to the 1991 redistricting plans for the Texas House of Representatives and Texas Senate.]; *LULAC v. NEISD*, 903 F. Supp. 1071 (W. D. Tex. 1995)[Co-counsel in successful challenge to election system for Trustees of the North East I.S.D.]; *LULAC v. State of Texas*, 113 F. 3rd 53 (5th Cir. 1998)[Lead counsel in successful challenge of a State election change under Section 5 of the Voting Rights Act.]; *Perez v. Pasadena I.S.D.*, 165 F. 3rd 368 (5th Cir. 1999)[Co-counsel in challenge to the at-large election system for Trustees of the Pasadena I.S.D.]; *Valdespino v. Alamo Heights I.S.D.*, 168 F. 3rd 848 (5th Cir. 1999)[Lead counsel in challenge to at-large election system for Trustees of the Alamo Heights I.S.D.] and numerous others. Also, in an article published by Texas Lawyer, a respected professional legal trade magazine, Jose Garza was named one of twenty-five extra-ordinary minority lawyers in Texas.

10. I have provided advice and direction to other private attorneys in at-large election challenges, Section 5 enforcement actions, and gerrymandering election challenges, as well as to various legal agencies in Texas. I have also testified before a Congressional subcommittee on the renewal of the Voting Rights Act. I have also been an adjunct professor at the University of Texas, School of Law and at St. Mary's University, School of Law where I taught a seminar course on Voting Rights.

11. It is my opinion, based on my experience, on awards made for my services in similar cases several years ago and upon inquiring of other lawyers, that the prevailing market rate for an attorney

of over thirty years experience, trying a case in his/her area of specialization, in a difficult and complicated civil rights case is between \$375 and \$400 per hour. Moreover, the State of Texas has paid its private lead counsel in voting rights litigation in the range of \$375 per hour and higher.

12. *Results Obtained and other Enhancement Factors.* The results obtained in this case are significant. Plaintiff has succeeded in remanding this case to a forum that the Texas Supreme Court as well as the United State Supreme Court have determined should have the first opportunity to entertain challenges to the State's redistricting plans, the State District Courts of Texas.

Costs

13. The expenses claimed in this motion are actual expenses made to properly and successfully prosecute this action. They include expenses for necessary copying, postage and the like.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

_____/s/_____
Jose Garza
Attorney for Plaintiff

ATTACHEMENT NO. 1

RÉSUMÉ

Jose Garza has more than thirty (30) years experience practicing law dealing almost exclusively with federal law. His practice areas focus mainly on governmental entities and federal litigation including 1st and 14th Amendment issues; redistricting, federal voting rights, and civil rights. Mr. Garza is currently the Litigation Director for Texas RioGrande Legal Aid, Inc.

Mr. Garza has represented Latino voters in voting rights litigation including state-wide redistricting cases. Mr. Garza has testified as LULAC Voting Rights Counsel before the Congress on the re-enactment of Section 5 of the Voting Rights Act and has Represented LULAC in various voting rights matters including as co-counsel in *LULAC v. Perry*, where the U.S. Supreme Court found the Texas Congressional districting plan illegal under the VRA, because it discriminated against Latino voters. Formerly, he was involved in voting rights litigation as Program Director for the Mexican American Legal Defense and Education Fund (MALDEF). Mr. Garza has taught voting rights seminars as an adjunct professor at the University of Texas at Austin, School of Law and St. Mary's University, School of Law.

Education: B.S. in Education, Texas A&I (1971-1973); Masters of Education, University of Texas at San Antonio (1973-1975); J.D., St. Mary's University (1975-1978).

Relevant Experience: *Law Office of Jose Garza* (1997-1998; March 2001-present); *Texas Rural Legal Aid, Inc.* (1978-1979; 1990- present (part-time)); *Gray & Becker* (1994-1996); *Mexican American Legal Defense & Education Fund* (1979-1990); *Texas Attorney General* (1986);

Adjunct Teaching Positions: *University of Texas, School of Law* (1988-1994) and *St. Mary's University, School of Law* (1990-1995)

Significant Cases:

Aguero v. Christopher, 481 F. Supp. 1272 (S.D. Tex. 1980) - Lead counsel in successful farmworker action brought to enforce provisions of Wagner-Peyser Act and Fair Labor Standards Act.

Alonzo v. Jones, C-81-277 (S.D. Tex. 1981) - Lead counsel in a successful action challenging the at-large election system for the City of Corpus Christi, Texas under the newly amended Voting Rights Act.

Comm. Court of Medina County v. United States, 719 F. 2nd 1179 (D.C. 1983) - Lead counsel representing minority defendant-interveners opposing Medina County's gerrymander redistricting plan in a preclearance action under Section 5 of the Voting Rights Act. Successfully overturned District Court's failure to award attorneys fees.

Lockhart v. United States, 102 S. Ct. 988 (1983) - Lead counsel representing minority defendant-interveners opposing City of Lockhart's preclearance proceedings before the United States District Court for the District of Columbia and before the United States Supreme Court.

Terrazas v. Clements, 537 F. Supp. 514 (N.D. Tex. 1982) - Co-counsel in successful challenge to States redistricting plans for Bexar and El Paso Counties.

Gomez v. City of Watsonville, 863 F. 2nd 1407 (9th Cir. 1988) - Co-counsel in successful challenge to the at-large election system for the City of Watsonville, California.

Overton and Calderon v. City of Austin, 871 F. 2nd 529 (5th Cir. 1989) - Lead counsel for Mexican American plaintiffs in challenge to at-large election system for the City of Austin.

Sanchez v. Bond, 875 F. 2nd 1488 (10th Cir. 1989) - Lead counsel in challenge to the election structure for Saguache County, Colorado Commissioners.

Mena v. Richards, C-454-91-F (332nd Judicial District, Hidalgo County, Texas, 1992) - Co-counsel in successful challenge to the 1991 redistricting plans for the Texas House of Representatives and Texas Senate.

LULAC v. NEISD, 903 F. Supp. 1071 (W. D. Tex. 1995) - Co-counsel in successful challenge to election system for Trustees of the North East I.S.D.

LULAC v. State of Texas, 113 F. 3rd 53 (5th Cir. 1998) - Lead counsel in successful challenge of a State election change under Section 5 of the Voting Rights Act.

Perez v. Pasadena I.S.D., 165 F. 3rd 368 (5th Cir. 1999) - Co-counsel in challenge to the at-large election system for Trustees of the Pasadena I.S.D.

Valdespino v. Alamo Heights I.S.D., 168 F. 3rd 848 (5th Cir. 1999) - Lead counsel in challenge to at-large election system for Trustees of the Alamo Heights I.S.D.

Gomez v. City of Eagle Pass, 91 F. Supp. 1000 (W. D. Tex. 2000) - Co-counsel in successful action against the City of Eagle Pass for illegal termination of City Manager in violation of Title VII's protection from gender discrimination, and 14th Amendment's protections from political patronage discrimination.

Balderas v. State of Texas, (E.D. Tex. 2001) - Co-counsel representing the Mexican American Legislative Caucus, in successful challenge to 2001 Texas redistricting plan for the Texas House of Representatives.

LULAC v. Perry, 126 S. Ct. 2594 (2006) – Co-Counsel representing the League of United Latin American Citizens (LULAC) in successful challenge to the 2003 Texas Congressional redistricting plan.

ATTACHMENT NO. 2

MALC v. State of Texas et al.,
Time Records - Jose Garza

<u>DATE</u>	<u>ACTIVITY</u>	<u>TIME</u>
5-16-11	Review removal pleadings. Confer with client and co-counsel.	.8
5-17-11	Review removal pleadings. Legal research: review cases cited; Review State Constitutional provisions cited in orig. petition; Research State court obligations during redistricting; review <i>Terrazas v. Ramirez</i> . Review text of State constitution.	7.4
5-19-11	Continue research of issues raised on removal. Review law review articles on the Texas Bill of Rights, and book on same.	7
5-20-11	Begin draft of motion to remand. Review <i>Terrazas v. Ramirez</i> , <i>Perry v. Del Rio</i> , <i>Perry v. Cotera</i> , <i>Sessions v. Perry</i> , etc.	5.25
5-21-11	Continue research and pleading drafts. Review <i>Balderas</i> . Mod. motion – begin draft of memo in support. Review cases on removal standards: <i>martin v. franklin capital</i> ; <i>in re hot-hed</i> .	3.8
5-23-11	Continue draft of memo in support of motion to remand.	2.8
5-24-11	Finish 1 st draft, review <i>Grove</i> and other U.S. Sup. Ct. cases On role of state district courts in redistricting including Congressional redistricting.	5.5
5-25-11	Work on fees aff'd. Confer with co-counsel on modifications.	.3
5-26-11	Finalize pleadings on motion to remand.	<u>2.5</u>
	Total hours through filing of motion	35.35
	Hours estimated for reply brief	3
	Total hours	38.35

EXHIBIT NO. 2

**IN THE UNITED STATES DISTRICT COURT
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MEXICAN AMERICAN LEGISLATIVE	§	
CAUCUS, TEXAS HOUSE OF	§	
REPRESENTATIVES (MALC)	§	
PLAINTIFF	§	
v.	§	CAUSE NO. 7:11-cv-00144
	§	
STATE OF TEXAS, et al.,	§	
DEFENDANTS	§	

**DECLARATION OF JOAQUIN G. AVILA IN SUPPORT OF PLAINTIFFS' REQUEST
FOR ATTORNEYS' FEES AND COSTS (REMAND TO STATECOURT)**

I, Joaquin G. Avila, declare under penalty of perjury that the following is true and correct:

1. I am an attorney duly licensed to practice before this Court and the courts of the State of Texas and California. I am admitted to practice before all United States District Courts in California, the United States Districts Courts for the Northern, Western, and Southern Districts of Texas, the United States Court of Appeals for the Ninth and Tenth Circuits and the United States Supreme Court.

2. I am co-counsel in the case of *Mexican American Legislative Caucus, Texas House of Representatives (MALC) v. State of Texas, et al.*, Cause No.. 7:11-cv-00144 (S.D. Texas). I offer this Declaration in support of Plaintiffs' request for attorneys' fees and costs in connection with the Defendant's removal of this case from state court to this Court. I have personal knowledge of the matters stated in this declaration, and I could and would testify competently about them if called upon to do so.

3. I am claiming \$2,465.00 in attorneys' fees for the work I performed in the removal/remand phase of this litigation. This amount is based upon a total lodestar amount consisting of \$2,465.00 derived from multiplying my hourly rate of \$725 with 3.4 hours. I have

attached a table summarizing my hours in this case as Exhibit A to this Declaration. I am not claiming any expenses associated with the removal/remand phase of this litigation.

4. At this time I am also reserving my claim for attorneys' fees for work I have performed for securing an award of attorneys' fees (fees-on-fees) for the removal/remand phase of this litigation.

BACKGROUND, EXPERIENCE AND QUALIFICATIONS

5. I am currently in a limited private practice focusing exclusively on voting rights cases. I have been a member of the faculty of Seattle University School of Law since 2004. Prior to my employment at Seattle University School of Law I was engaged in a full-time private practice focusing exclusively on voting rights cases since 1985. Before the establishment of my private practice I worked for the Mexican American Legal Defense and Educational Fund from 1974 to 1985.

6. I received my Bachelor of Arts degree at Yale University in 1970 and I graduated in 1973 from Harvard Law School. I have been a licensed attorney in the state of California since 1973. After completing law school, I clerked for the Alaska State Supreme Court under then Justice James M. Fitzgerald, now retired from his position as United States Senior District Judge for the District of Alaska.

7. In 1974, I began working as a staff attorney for the Mexican American Legal Defense and Educational Fund ("M.A.L.D.E.F."). Through my work at M.A.L.D.E.F. I developed an expertise in voting rights litigation as well as other class action and multiple plaintiff complex litigation at both the trial and appellate levels. I worked at M.A.L.D.E.F. as a staff attorney, regional director of the San Antonio, Texas office, director of the organization's voting rights programs and as President and General Counsel from 1982 to 1985.

8. During 1981, I was involved in key legislative efforts to secure an extension of the Voting Rights Act. I provided oral and written testimony to the United States House of Representatives Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary and to the United States Senate, Subcommittee on the Constitution, Committee on the Judiciary.

See “Extension of the Voting Rights Act,” Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, 97th Congress, 1st Session, Part 2 at p. 929 (June 5, 1981), and “Voting Rights Act Extension,” Report of the Committee on the Judiciary, United States Senate on S. 1992, 97th Congress, 2d Session, Report No. 97-417, at p. 11 (February 1, 1982). In addition, I participated in an extensive effort with other voting rights litigators to provide advice and information to members of Congress regarding enforcement of the Voting Rights Act.

9. During 2006, I was also involved in legislative efforts to reauthorize and amend the Voting Rights Act. I provided oral and written testimony to the Subcommittee on the Constitution, United States Senate Judiciary Committee in support of these legislative efforts. “Renewing the Temporary Provisions of the Voting Rights Act: Legislative Options after *LULAC v. Perry*,” Subcommittee on the Constitution, Civil Rights and Property Rights, United States Senate Judiciary Committee, July 13, 2006 (Written Testimony: Joaquin G. Avila, Eugene Lee and Terry M. Ao, Voting Rights in California, 1982-2006, A Report of RenewtheVRA.org, May 2006; Joaquin G. Avila, Report on Section 5 Non-Compliance: The Absence of Federal Enforcement, A Report of RenewtheVRA.org, June 24, 2006).

10. In addition to my work at M.A.L.D.E.F., I served as a Lecturer at the University of Texas Law School from 1977 to 1982, teaching seminars and classes on civil rights and voting rights litigation. I have also prepared outlines and conducted presentations for the Practicing Law Institute on voting rights litigation.

11. In 1985, I established a statewide private practice limited exclusively to voting rights litigation. From 1985 until the fall of 2004 when I commenced my employment at Seattle University School of Law, I was the only attorney in private practice in California and in the nine state area encompassed by the United States Court of Appeals for the Ninth Circuit who represented African Americans, Asian Americans, and Latinos in action to enforce both the federal Voting Rights Act, 42 U.S.C. § 1973, *et seq.* and the California State Voting Rights Act,

Cal. Elect. Code §§ 14025-14032, on a full time basis. From the fall of 2004 to the present I still continue my litigation to enforce both the federal and state voting rights on a part-time basis.

12. I am informed and believe, based upon my extensive knowledge of the voting rights legal community, that I am one of less than five attorneys in private practice in the entire United States that have a practice focusing exclusively on voting rights enforcement.

13. Since establishing my private practice in 1985, I have been involved in at least 70 major voting rights cases, including the present litigation. *See* List of Cases, Exhibit C.

14. I have also taught voting rights courses during the following semesters and law schools: spring semester of 1990 - University of California, Berkeley, School of Law (Boalt Hall); fall semester of 2003 – University of California at Los Angeles, School of Law; spring semester of 2005, spring semester of 2006, spring semester of 2007 – Seattle University School of Law.

15. My voting rights work also consists of non-litigation activities such as authoring voting rights publications, making academic, community and other public and private presentations on voting rights, developing and producing voting rights research projects and conducting pre-filing investigations for potential voting rights cases.

16. My recent publications are as follows: 1) Macmillan Reference USA, Entry: the Mexican American Legal Defense and Educational Fund, Encyclopedia of the Supreme Court of the United States (2008); 2) Steven W. Bender, Raquel Aldana, Gilbert Paul Carrasco, and Joaquin G. Avila, Everyday Law for Latino/as (2008) (Paradigm Publishers) (Chapter 7, Voting Rights); “Renewing the Promise of Ending Voting Discrimination: A Return to an Effective Section 5 Retrogression Standard,” Response to Nathaniel Persily’s article, “The Promise and Pitfalls of the New Voting Rights Act,” Response at 117 Yale Law Journal Pocket Part 110 (2008); “Voting Rights in California: 1982-2006,” 17 S. Cal. Rev. of Law & Social Justice 131 (Fall 2007) (coauthors – Eugene Lee, Terry M. Ao); “Judiciary Should Reflect State’s Diversity,” King County Bar Association Bar Bulletin 14 (August 2006); “The Washington 2004

Gubernatorial Election Crisis: The Necessity of Restoring Public Confidence in the Electoral Process,” 29 Seattle U. L. Rev. 313 (2006).

17. Because of my recognized expertise in the area of voting rights, I am often asked to make presentations regarding Latinos and access to the political process by community groups, colleges and universities. For the years of 2008 and up to March 2011, I made the following presentations (most recent listed first): 1) Speaker – Cesar Chavez Week, University of California at Davis Law School, “Decade of Latino Political Empowerment,” March 29, 2011, Davis, California; 2) Speaker – National Association of Hispanic Publications, Media & Legislative Summit, “Preparing for 2012 Elections,” March 28, 2011, Washington, D.C. ; 3) Panelist – 5th Annual National Latino Congreso (2011), Workshop: Latinos and Redistricting, March 26, 2011, Austin, Texas; 4) Presenter – Board Meeting, Latino Bar Association of Washington, Role of Latino Bar Association of Washington in Upcoming Redistricting Cycle, March 24, 2011, Seattle, Washington; 5) Panelist – Community Forum on Race, Power & Elections: Redistrictings in Washington, Co-sponsors: Latino Community Fund, Social Justice Fund Northwest, Win/Win Network, Latino PAC of Washington, Seattle University School of Law and the Latina/o Bar Association of Washington, March 17, 2011, Seattle, Washington; 6) Participant – Workshop: Philanthropy Northwest Member Briefing: “People, Power and Elections: Redistricting in Washington,” Philanthropy Northwest, March 16, 2011, Seattle, Washington; 7) Participant – Workshop: “Redistricting California: Cutting Edge Questions,” Chief Justice Earl Warren Institute on Law and Social Policy, University of California, Berkeley Law, March 2, 2011, Los Angeles, California; 8) Panelist – Workshop: “Taking the Local, Redistricting CA Conference,” Location: California Endowment, Center for Healthy Communities, January 25, 2011, Los Angeles, California; 9) Participant – “National Redistricting Convening,” Mexican American Legal Defense and Educational Fund, December 8-10, 2010, San Antonio, Texas; 10) Panelist – Panel: “Fair and Equal Voting Rights – Roundtable discussion,” “The Unfinished Work, A conference in honor of Julius L. Chambers, Advancing New Strategies in the Struggle for Civil Rights, University of North Carolina, Center

for Civil Rights, November 1, 2010, The Friday Center, Chapel Hill, North Carolina; 11) Participant – Workshop: “Redistricting and Voting Rights Meeting,” Chief Justice Warren Institute on Race, Ethnicity and Diversity, October 29, 2010, University of California Berkeley Law School, Berkeley, California; 11) Panelist – Panel: “Race, Reform and Independent Redistricting Commissions,” Voting Rights & Redistricting Training Institute, Protecting Minority Voting Rights & Moving Closer to Political Equality, NAACP Legal Defense Fund, October 8, 2010, Airlie Conference Center, Warrenton, Virginia; 12) Panelist – Panel: “The Electoral Marketplace for the Latino Vote,” 14th Annual Latina/o Law Student Conference, Yale Law School, October 1, 2010, New Haven, Connecticut; 13) Panelist – Panel on At-Large Voting – Seattle Human Rights Commission Meeting, September 2, 2010, Seattle, Washington; 14) Panelist – Panel on Expert Testimony, Participant in Mock Expert Deposition and Participant in Mock Trial Testimony – Community Census and Redistricting Institute, Southern Coalition for Social Justice, July 30, 2010, Durham, North Carolina; 15) Panelist - Turning the Numbers into Lines: Redistricting Data Issues and Challenges - 2010 NALEO Annual Conference, June 25, 2010, Denver, Colorado; 16) Keynote Address, Oregon Hispanic Bar Association, 4th Annual Award Dinner – February 26, 2010, Portland, Oregon; 17) Panelist – History of Voting Rights - Gateways for Incarcerated Youth program, Evergreen State College – Presentation at Green Hill Detention Facility - February 24, 2010, Chehalis, Washington; 18) Panelist-Citizen Engagement in Redistricting: A Briefing and Discussion with Funders – Brookings Institution, November 17, 2009, Washington, D.C; 19) Panelist – Redistricting and Voters of Color: A Primer – Redistricting Reform and Voting Rights: Identifying Common Ground and Challenges, Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, University of California, Berkeley Law, November 10, 2009, Washington, D.C.; 20) Panelist – Reapportionment in 2010 and Counting Undocumented Latinos – Julian Samora Research Institute, Latino/a Communities in the Midwest, A Commemoration of Two Decades of Research in the Nation’s Heartland, Michigan State University, November 6, 2009, East Lansing, Michigan; 21) Panelist – California Voting Rights Act – Redistricting and the 2010 Census: Changes and Challenges for California

Governments, Rose Institute of State and Local Government, Claremont McKenna College, October 15, 2009, Claremont, California; 22) Invited Participant – NAACP Legal Defense & Educational Fund Convening Future Litigation and Enforcement Under the Voting Rights Act in the Wake of the 2009 Supreme Court Term, September 23, 2009, Washington, D.C.; 23) Presenter – Voting Rights in Washington State, Access to Justice Institute, Social Justice Mondays, September 21, 2009, Seattle University School of Law, Seattle, Washington; 24) Panelist – Panel: Latino Access to Democracy: Pitfalls and Promises, Hispanic National Bar Association, September 4, 2009, Albuquerque, New Mexico; 25) Participant (Follow-up Meeting) - Fair Redistricting 2010: Planning for a Community Census and Redistricting Institute – Southern Coalition for Justice & Center for the Study of Race, Ethnicity and Gender in the Social Sciences, Social Science Research Institute, Duke University, July 20, 2009, Atlanta, Georgia; 26) Participant – Fair Redistricting 2010: Planning for a Community Census and Redistricting Institute – Southern Coalition for Justice & Center for the Study of Race, Ethnicity and Gender in the Social Sciences, Social Science Research Institute, Duke University, June 24, 2009, Durham, North Carolina; 27) Presenter – Washington Latino Education Summit - Topic: Connecting Educational Results, School District Policies and Election Systems: Lessons and Strategies from States with Growing Latino Populations – May 29, 2009, Seattle, Washington; 28) Speaker, Chicano Latino Caucus California Democratic Party, Convention Caucus Meeting – Topic: Political Empowerment for Latinos – April 24, 2009, Sacramento, California; 29) Speaker - Hispanas Organized for Political Equality (HOPE), 15th Annual Latina Action Day –Topic: Proposition 11 Redistricting and its Impact on Latina Representation – April 21, 2009, Sacramento, California; 30) Discussant – Voting Rights, Political Entanglement, and Legislative Action: The State of the State for Washington Latinos, Community Forum, Whitman College, March 11, 2009, Seattle, Washington; 31) Lecture – Voter Disenfranchisement – Washington Young Lawyers Division’s Electoral Process Series, CLE, Seattle University School of Law, February 26, 2006, Seattle, Washington; 32) Lecture – A Post-Racial American Politic? – The Supreme Court and the Voting Rights Act, Black Law Students Association, University of

Washington Law School, February 25, 2009, Seattle, Washington; 33) Panelist – Opening Session: Wiley A. Branton Issues Symposium, Town Hall Meeting: Election Protection, National Bar Association, Twentieth Annual Wiley A. Branton Issues Symposium & Awards Luncheon, October 17, 2008, Seattle, Washington; 34) Panelist – United States Electoral Systems, Tuesday’s Inn of Court Panel, October 14, 2008, Seattle University, Seattle, Washington; 35) Panelist – Women and Voting: Ensuring Our Voices Are Heard, 2008 Leadership Symposium, Breaking Through the Marble Ceiling: Women in Politics, Washington Women Lawyers' Association, October 11, 2008, Seattle, Washington; 36) Speaker – Opening Roundtable – Topic: Representation and Republican Governance – Critical Interrogation of Election Systems and the Exercise of the Franchise, Thirteenth Annual LatCrit Conference, October 4, 2008, Seattle University School of Law, Seattle, Washington; 37) Guest Speaker – Community Event, Presentation on Voting Rights Issues, MACLA (Movimiento de Arte Y Cultura Latino Americana), September 18, 2008, San Jose, California; 38) Guest Speaker – Topic: Voting Rights Discrimination, Santa Clara University School of Law, September 18, 2008, Santa Clara, California; 39) Panelist – Panel – Practicing Democracy, Reflections on Voter Protection and Political Participation since 1968, American Constitution Society for Law & Policy, David J. Epstein Program in Public Interest Law and Policy, Critical Race Studies Program, University of California at Los Angeles, School of Law, September 8, 2008, Los Angeles, California; 40) Panelist – Panel – Project Safe: Voter Protection 2008, Hispanic National Bar Association Convention, September 6, 2008, Los Angeles, California; 41) Panelist – Panel - Guess Who’s Coming to Dinner: The 2010 Census, Changing Demographics and Political Representation, Hispanic National Bar Association Convention, September 5, 2008, Los Angeles, California; 42) Guest Speaker & Honoree, 20th Anniversary Celebration of the Landmark Voting Rights Case: Dolores Cruz Gomez v. City of Watsonville, Sponsor – The Pajaro Valley Cesar Chavez Democratic Club, August 21, 2008, Watsonville, California; 43) Presenter - World Affairs Council: Federalism Briefing for Georgian Conflict Resolution Delegation, August 19, 2008, Seattle, Washington; 44) Panelist – Panel – Election Law, 2008 National Association of

Appellate Court Attorneys, Education Seminar, July 3, 2008, Portland, Oregon; 19) Participant – Conference – Rebellious Lawyering, June 22-26, 2008, Taos, New Mexico; 45) Presentation – King County Council’s Town Hall Meeting, Public Campaign Financing, June 2, 2008, Shoreline, Washington; 46) Panelist – Panel, Latino Family in Our Society, National Consortium on Racial and Ethnic Fairness in the Courts, May 1, 2008, Seattle, Washington; 47) Presentation – Fees and Costs Workshop, Mexican American Legal Defense and Educational Fund, Board of Directors, April 25, 2008, San Antonio, Texas; 48) Presentation, High School Students, Cleveland High School, April 22, 2008, Conveners – Richard Simpson & Alesha Struthers, Seattle, Washington; 49) Panelist, Trade-Immigration Roundtable, Port of Seattle Commission, April 21, 2008, Seattle, Washington; 50) Presentation, Voting Rights, ACLU - Student Chapter, Seattle University School of Law, March 13, 2008, Seattle, Washington; 51) Presentation, El Poder Político de los Latinos en E.U.A., Universidad Autónoma de Baja California, Facultad de Derecho, March 9 – 10, 2008, Mexicali, Mexico; 52) Presentation, Student Research Class, Whitman College, Prof. Paul Apostolidis, February 20, 2008, Walla Walla, Washington; 53) Paper Presentation, “A New Poll Tax: The Bill of Costs,” University of California at Davis School of Law, Faculty Presentation, February 14, 2008, Davis, California; 54) Panelist, Civil Rights, Attorneys Fees, and the Meaning of Pro Bono, Brown Undone? The Future of Integration in Seattle After *PICS v. Seattle School District No. 1.*, February 9, 2008, Seattle University School of Law, Seattle, Washington; 55) Panelist, California Case Studies, Coloring the Vote: Race, Politics, and Disenfranchisement, A Conference on Voting Rights, American Indian Studies Center, Asian American Studies Center, Bunche Center for African American Studies, and Chicano Studies Research Center, January 26, 2008, University of California at Los Angeles.

18. Governmental agencies have also recognized my expertise in the voting rights area. For example, the County of Santa Clara, California, Redistricting Task Force stated:

“One of the first priorities of the Task Force was to invite Mr. Joaquin Avila to address the group. Mr. Avila is widely

recognized for his experience in determining compliance of district plans with the requirements of the Voting Rights Act. He made a presentation to the Task Force on the primary legal considerations in redrawing district boundaries, and expressed his willingness to consult further with the Redistricting Committee. The Task Force found Mr. Avila's experiences and expertise valuable, and wishes to thank him for his contribution to this report."

Santa Clara County Redistricting Task Force Report and Recommendations,
Susanne Wilson, Chair, July 17, 1990, at p. 2.

19. Because of my extensive experience in voting rights litigation and Latino voting rights issues in California and elsewhere in the nation, other attorneys and organizations often consult me for advice. This advice has ranged from observations on the political access barriers confronting the Latino community on a national level to advice involving whether a given political subdivision should be challenged on the grounds of minority vote dilution and potential violation of the federal Voting Rights Act and the California State Voting Rights Act of 2001.

20. Governmental entities have retained me to provide advice on districting and to develop districting plans for their elections. For example I have provided assistance to the following jurisdictions:

Sacramento County Office of Education – provided legal advice and redistricting services.

City of Watsonville - provided assistance in redistricting city council districts after the publication of the 1990, 2000 and 2010 Censuses.

California Legislature Latino Caucus - served as consultant to Data Trends which provided advice and technical assistance to the Latino Legislative Caucus regarding the redistricting of state assembly and state senate districts.

San Jose Unified School District - provided assistance in formulating a proposed districting plan for school board members.

San Jose/Evergreen Community College District - provided assistance in formulating a proposed districting plan for college board members.

Los Angeles County Board of Supervisors - provided advice and assistance to the Board of Supervisors in their efforts to redistrict the county supervisorial districts based upon the 1990 Census.

Monterey County Committee on School District Organization - assisted the Committee in securing approval from the United States Attorney General pursuant to the federal Voting Rights Act of election changes affecting the Hartnell Community College District and the Salinas Union High School District.

Hartnell Community College District, Monterey County - assisted the District in securing approval from the United States Attorney General pursuant to the federal Voting Rights Act of its 1991 redistricting plan.

Alisal Union School District, Monterey County - assisted the school district to convert to district elections and to secure approval of a districting plan from the United States Attorney General pursuant to the federal Voting Rights Act.

Santa Clara County Open Space Authority - assisted the Authority to institute district elections for selecting members to the governing board.

City of Salinas, Monterey County - provided legal assistance to the City of Salinas in its efforts to modify a redistricting plan adopted by the Monterey County Board of Supervisors which fragmented the City among several supervisorial districts.

21. I have also participated in efforts to secure the passage of state statutes that would provide Latinos and other racial and ethnic minorities with greater access to the political process. The following is a partial list of such activities:

California State Voting Rights Act of 2001, California State Legislature, 2001 - 2002 Regular Session. Assisted the office of Senate Majority Leader Richard Polanco and his then chief of staff, Saeed Ali, with the drafting of this legislation to permit at-large election challenges in state court. Testified before various legislative committees and spearheaded the effort to assist the Majority Leader to secure the passage of this landmark legislation. The Act eliminates many of the evidentiary burdens imposed by the federal Voting Rights Act. No other state has a similar voting rights act. The Act was signed into law - Cal. Election Code §§ 14025-14032.

Assisted Assemblyman Peter Chacon in formulating and drafting various bills designed to provide minorities with greater access to the political process. Also testified before legislative committees on these bills:

Assembly Concurrent Resolution No. 35, California Legislature, 1989 - 1990 Regular Session. Resolution provided for the appointment of a Legislative Task Force to conduct a study of the desirability of district elections in local governments and the use of alternative forms of election structures which would provide minorities with greater access to the political process. Chaptered: Resolution Chapter 144, Statutes of 1990.

Assembly Bill No. 2, California Legislature, 1989 - 1990 Regular Session. A.B. No. 2 mandated district elections for school districts meeting certain criteria. The bill passed both the Assembly and the Senate, but was vetoed by the Governor.

Assembly Bill No. 343, California Legislature, 1989 - 1990 Regular Session. Initially A.B. No. 343 provided for changes in election procedures relating to schools and community college districts. These

changes facilitated the ability of local communities to establish district elections. On August 7, 1990, the State Senate amended A.B. No. 343. The Senate amendment changed the focus of the bill to the retention of certain election records. These election records consisted of information relating to voter registration and voter turnout. The bill did not go beyond the Senate Appropriations Committee.

Assembly Bill No. 845, California Legislature, 1989 - 1990 Regular Session. A.B. No. 845 permitted municipalities in response to litigation based upon the federal Voting Rights Act, the Fourteenth and Fifteenth Amendments to the United States Constitution, a federal civil rights act, 42 U.S.C. § 1983, and Article I or Article II of the California Constitution, to adopt an ordinance which incorporated district elections as a proposed remedy without the necessity of first securing public approval in an election. The bill passed both the Assembly and the Senate, but was vetoed by the Governor.

Assembly Bill No. 4126, California Legislature, 1989 - 1990 Regular Session. A.B. No. 4126 required the Board of Supervisors to use census information as a basis for redistricting and to comply with the applicable provisions of the federal Voting Rights Act. Became Law: Chapter 1477, Statutes of 1990.

Assembly Bill No. 1002, California Legislature, 1991 - 1992 Regular Session. A.B. No. 1002 would require school districts meeting certain criteria to adopt a district based election system for electing members to the school board. The bill passed both the Assembly and the Senate, but was vetoed by the Governor.

Assembly Bill No. 1107, California Legislature, 1991 - 1992 Regular Session. A.B. No. 1107 facilitated the procedures for permitting community residents to petition their school districts for establishing district elections. The bill passed both the Assembly and the Senate, but was vetoed by the Governor.

Assembly Bill No. 2949, California Legislature, 1991 - 1992 Regular Session. A.B. No. 2949 followed basically the same language as A.B. 1107 which affected the procedures for petitioning school districts for establishing district elections. Became Law: Chapter 350, Statutes of 1992.

22. In recognition of the importance of the voting rights work performed by my office, I was awarded The Vanguard Public Foundation's Social Justice Sabbatical on June 10, 1996, and on June 12, 1996, I was awarded a John D. and Catherine T. MacArthur Foundation Fellowship.

TIME EXPENDED BY MY OFFICE

23. I served in the capacity of a senior litigation advisor in this removal/remand phase of this litigation. I am claiming a total of 3.4 hours for work on the removal/remand phase of this case. This work consisted of telephone conferences with Jose Garza, lead counsel in this litigation, review of the removal petition and memorandum in support of remanding the case to the state court.

24. In view of my special expertise in actions to enforce the federal Voting Rights Act and the California State Voting Rights Act of 2001, I am requesting an award of \$ 725 per hour for my work in this litigation. This is my current billing rate and it is the rate I charge governmental entities for consultations regarding the application of the federal Voting Rights Act and the California State Voting Rights Act of 2001. Such an hourly rate reflects the expertise that is necessary to litigate case involving minority vote dilution issues. An attorney in this area

has to have a working knowledge of statistical procedures utilized to determine whether elections are characterized by racially polarized voting. In addition, complex legal questions regarding an appropriate remedy may arise upon the successful completion of the liability phase of a voting rights case. Given my close to 40 years of litigating voting rights cases, my requested hourly rate is justified.

25. The \$ 725 hourly rate that I am requesting is commensurate with rates charged by prominent attorneys in the Los Angeles and San Francisco areas with comparable expertise, skill and reputations. This hourly rate is reflective of my close to 40 years of experience in voting rights litigation and advocacy efforts which has included legislative work and successful arguments before federal district courts, appellate courts and the United States Supreme Court. There are only a few attorneys in the country that can match this extensive voting rights experience.

26. I am not aware of any other attorney in the nine states encompassed by the United States Court of Appeals for the Ninth Circuit who can match my experience in voting rights cases addressing minority vote dilution issues.

27. The 3.4 hours claimed in this request for attorneys' fees for the removal/remand phase of this litigation represents only the hours expended which, in the exercise of my professional judgment, were reasonably necessary to this phase of the litigation. Based upon the efficiency with which I worked on the case at bar, I believe that my lodestar for this phase of the litigation is reasonable.

28. There was no unnecessary duplication of work between my work and the work of Jose Garza. Mr. Garza, as reflected in his hourly billing records, devoted a substantial amount of the time that was necessary to oppose the removal of this case to federal court. I conferred with Jose Garza offering my recommendation regarding legal strategy, reviewed the arguments presented in the removal petition, and reviewed the memorandum in support of the remand to the state court.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, and that this declaration was executed on May 27, 2011 at King County, Washington.

Joaquin G. Avila

JOAQUIN G. AVILA

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EXHIBIT A

MALC v. State of Texas, et al.

CAUSE NO. 7:11-cv-00144

Joaquin G. Avila – Hours (Removal/Remand)

Date	Description	Hours
05/31/11	Conference call with Jose Garza re: litigation strategy.	0.6 h
05/16/11	Conference call with Jose Garza re: litigation strategy.	0.9 h
05/21/11	Review of removal petition.	1.1 h
05/25/11	Review of remand memorandum.	0.8 h

MALC v. State of Texas, et al.

CAUSE NO. 7:11-cv-00144

Joaquin G. Avila – Hours (Removal/Remand)

Date	Description	Hours
Total		3.4 h