

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

SHANNON PEREZ, et al., §
Plaintiffs, §
v. § CIVIL ACTION NO.
§ 11-CA-360-OLG-JES-XR
STATE OF TEXAS, et al., § [Lead Case]
Defendants. §

MEXICAN AMERICAN §
LEGISLATIVE CAUCUS, TEXAS §
HOUSE OF REPRESENTATIVES, §
Plaintiffs, § CIVIL ACTION NO.
v. § SA-11-CA-361-OLG-JES-XR
§ [Consolidated Case]
STATE OF TEXAS, et al., §
Defendants. §

TEXAS LATINO REDISTRICTING §
TASK FORCE, et al., §
Plaintiffs, § CIVIL ACTION NO.
v. § SA-11-CA-490-OLG-JES-XR
§ [Consolidated Case]
RICK PERRY, §
Defendant. §

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

EDDIE RODRIGUEZ, et al., §
Plaintiffs, §
v. § CIVIL ACTION NO.

RICK PERRY, et al.,	§	SA-11-CA-635-OLG-JES-XR
Defendants.	§	[Consolidated Case]
	§	

LULAC PLAINTIFFS' MOTION FOR LEAVE TO SUPPLEMENT THE RECORD WITH DECLARATION FROM TEXAS LULAC STATE DIRECTOR

The League of United Latin American Citizens Plaintiffs (“LULAC Plaintiffs”) reply to the response (Doc. 1343) of the state defendants opposing the LULAC Plaintiffs’ motion to supplement the record with a two-page declaration from LULAC Texas’s statewide director.

LULAC has a long and storied history as a leader in litigation trying to protect and further the voting rights of its Texas members and all of the state’s Latino voters. It is unquestioned, and never has been questioned in any litigation of which counsel is aware, that it has members across the length and breadth of the state who are eligible voters.

The state defendants have never questioned these basic facts about LULAC or the same basic facts about its eleven individual member plaintiffs in this case. Early in the case, in the summer of 2011, the state defendants’ answer to the allegations in the complaint in intervention of the LULAC plaintiffs was that they lacked knowledge or information sufficient to admit or deny the basic membership and residence facts about LULAC and its plaintiff members. Doc. 75 (¶¶ 10-21). From that point onward, through two trials and too many hearings to count, the state defendants never raised even one question or presented any evidence or exhibit calling into question any of the membership and residence facts alleged in LULAC’s original complaint.

Then, two years ago, the Court requested input from the parties on whether any supplemental evidence was needed in light of the Supreme Court’s decision in *ALBC v. Alabama*, 135 S.Ct. 1257 (2015). One part of that decision was devoted to questions the State of Alabama had raised about the timing of a voting rights organizations’ evidence on the basic facts

about its membership and residences around the state. So, responding to the Court's request, the LULAC plaintiffs provided the Court and the parties (including the state defendants) the declaration of LULAC Texas's executive director which provided the basic facts about membership and about the eleven individual plaintiffs that is now before this Court in the pending motion. They suggested at that time that the matter was so basic and undisputed that the declaration could be admitted without the need for some kind of proffer in Court.

The state defendants opposed LULAC's suggested solution. It did not provide any reason why it would be harmed from the suggested way of handling this; it just opposed the request.

Then, the state defendants did nothing about it. Twice that year, LULAC's counsel contacted the state defendants' counsel, letting him know that the executive director would be made available for a deposition if the state defendants were interested. Apparently, they weren't, since they never even responded to the offer. It appears this was nothing of consequence to them so they did nothing about it.

The state defendants claim in their response that they will be "severely prejudiced" if the declaration is made part of the record. State Resp. at 6. But they don't provide any substantive basis for the assertion. Further, they don't offer any reason why they failed to take any steps to depose the executive director for the two years after the declaration was submitted. Finally, they don't explain why this matter cannot and should not be handled in the same fashion as the Supreme Court handled the nearly identical situation in the Alabama case. *See ALBC*, 135 S.Ct. at 1269-1270.

As stated at the beginning of this reply, LULAC has a long history of litigating voting rights issues. Since 1990 alone, not counting its pioneering early efforts in this area, it has been involved as a party in many voting rights cases, including some of the major ones of the last

three decades. *See, e.g., LULAC v. Perry*, 548 U.S. 399 (2006); *Houston Lawyers' Ass'n v. Att'y Gen. of Texas*, 501 U.S. 419 (1991) (where at 421, the Court described LULAC as "a statewide organization composed of both Mexican-American and African-American residents of the State of Texas"); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (*en banc*); *LULAC v. City of Boerne*, 659 F.3d 421 (5th Cir. 2011); *LULAC v. Roscoe ISD*, 123 F.3d 843 (5th Cir. 1997); *LULAC v. Texas*, 113 F.3d 53 (5th Cir. 1993); *LULAC v. NEISD*, 903 F.Supp. 1071 (W.D. Tex. 1995); *LULAC v. Clements*, 999 F.2d 831 (5th Cir. 1993) (*en banc*). It was also a plaintiff in the *Davis v. Perry* 2011 redistricting case in this Court. Not even once has there been a single question raised about its membership across the state or its strong interest in voting rights litigation.

The state defendants have not provided the Court any valid reason for declining what is a fairly routine matter of judicial housekeeping. The LULAC plaintiffs, therefore, urge the Court to grant their motion, as requested.

DATED: March 24, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on March 24, 2017, a true and correct copy of the above and foregoing document was served on all parties in accordance with the Federal Rules of Civil Procedure.

/s/ Luis Roberto Vera, Jr.
Luis Roberto Vera, Jr.