

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

SHANNON PEREZ, *et al.*,

Plaintiffs,

v.

STATE OF TEXAS, *et al.*,

Defendants.

CIVIL ACTION NO.
SA-11-CA-360-OLG-JES-XR
[Lead Case]

**PLAINTIFF MALC'S AMENDED PRE-TRIAL BENCH BRIEF AND PRE-TRIAL
DISCLOSURES**

Pursuant to and in response to this Court's orders of June 1, 2017 and May 1, 2017,
Plaintiff MALC submits the following disclosures and statement of the case:

I. Pre-Trial disclosures:

- a. MALC has no stipulations of fact or agreements with the parties beyond the joint stipulation of facts to be submitted by the Texas OAG.
- b. MALC expects to present the following fact and expert witnesses:
House -
Lay witnesses – Rep. Rafael Anchia (15min); Trey Martinez Fischer (30min)
Experts – George Korbel (20 min.); Dr. Robert Brischetto (20min)
Congress -
Lay witness - Anchia (15min.); Rep. Ana Hernandez (15min.)
Expert - Korbel (30min); Dr. Henry Flores (30min).
- c. Plaintiff MALC does not intend to present any witness testimony through deposition designation.
- d. Plaintiff MALC's exhibit list is attached hereto.

II. Claims and expected evidence in support of claims:

A. Section 2 of the Voting Rights Act – Results - H358.

1. Plan H358 as a Whole

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 violates Section 2 of the Voting Rights Act in that Article III, § 26 of the Texas Constitution was used to avoid the creation of additional majority Latino and majority minority (coalition) opportunity districts in H358. *See* Dkt. 897, MALC’s Third Amended Complaint, ¶¶ 7, 38- 45, 75.

More generally, MALC has submitted Section 2 results claims that Texas could have enacted a plan with more minority opportunity districts (both single-minority and coalition district or combined minority districts). *Id.* ¶¶ 2, 74-75.

Plaintiff MALC has standing to present these claims as an organizational and associational plaintiff.

a. MALC Has Standing

1) MALC has Associational Standing

The United States Supreme Court set out a three-prong test to establish associational standing in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343(1977):

We have recognized that an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

432 U.S. at 343.

a) Individual MALC members have standing.

MALC’s members are members of the State House of Representatives. All MALC members are citizens, residents and voters of Texas. Most of MALC’s members are Latino, and

most represent Latino majority districts. As individual voters, they have individual standing to challenge discriminatory election practices. *LULAC v. Clements*, 999 F.2d 831, 845-46 (5th Cir. 1993) (“We agree that the standing of voters in a voting rights case cannot be gainsaid.”) Plaintiff’s Third Amended Complaint sets out those factual allegations. (Plaintiff’s Third Amended Complaint pp. 3-4.) Moreover, the Plaintiff’s Third Amended Complaint, in fact, describes the discriminatory redistricting practices that are included in the challenged 2013 plan adopted by the State for the Texas House of Representatives. MALC’s Third Amended Complaint specifies some of the districts represented by Plaintiff’s members as **illustrative** of that discrimination. Dkt. 897, Plaintiff’s Third Amended Complaint, ¶¶ 42-43 (Nueces County), ¶¶ 46-50 (Harris County). These allegations include among other things that the Texas plans failed to account for the population growth of the Latino and minority community, overpopulating most of the Latino majority districts to avoid creating additional Latino majority districts, using the so-called “whole county rule” in a manner to eliminate a majority Latino opportunity district in Nueces County and to avoid adding Latino majority districts to Harris, Bell, Dallas and Fort Bend Counties and using traditional racial gerrymandering techniques such as packing and cracking to limit the number of Latino majority districts. *Id.* ¶¶ 2-4, 6-7, 38-39, 41, 43-45, 47-57.

Finally, the rules of pleading practice in federal court are governed by Rule 8(a)(2). Thus, Plaintiff is not required to allege more specific facts. Plaintiff did not specifically allege facts in its Third Amended Complaint such as: the fact that Representative Raul Torres, a Republican member of MALC at the time of the filing of this action and the initial redistricting, had his district completely eliminated and was then paired with Anglo Republican Representative Connie Scott. Yet, Plaintiff’s allegations clearly put the Defendants on notice of the type of facts Plaintiff will develop in furtherance of its claims. Clearly, the

individual members of MALC have standing to bring these claims themselves.

b) MALC's claims are germane to its purpose and goals.

MALC has alleged that its purpose is to serve the members of the Texas House of Representatives and their staffs in matters of interest to the Mexican American community of Texas, in order to form a strong and cohesive voice on those matters in the legislative process, including redistricting. MALC's purpose includes "strengthening their numbers and better representing a united Latino constituency across the state." 2017 MALC Exh. 1. MALC has raised concerns regarding redistricting in Texas both during the legislative process and in the courts. MALC successfully challenged the 2000 redistricting, resulting in greater representation for the Latino community of Texas and protecting the districts of its members. In the 2011 redistricting process, MALC again played a vital role during the legislative process and has intervened without objection from the State in *Teuber v. State of Texas*, (W.D. Tex. Civil Action No. SA-11-ca-572). Defending the integrity of its members' districts and challenging redistricting plans that dilute Latino voting strength is germane to MALC's goals and purposes.

c) Individual members of MALC are not necessary parties.

MALC is only seeking injunctive and declaratory relief in this lawsuit and, therefore, the participation of MALC's individual members is not necessary. *See Warth v. Seldin*, 422 U.S. 490, 515 (1975) (noting that "if in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured. Indeed, in all cases in which we have expressly recognized standing in associations to represent their members, the relief sought has been of this kind.")

Thus, the three-pronged test for associational standing has been met here.

2) MALC has Organizational Standing

In addition to associational standing, MALC also has organizational standing of its own. *See Warth v. Seldin*, 422 U.S. 490, 511 (1975). MALC's organizational purpose, at least in part, is to provide representation through the legislative process to its Latino constituency across the state. 2017 MALC Exh. 1. Moreover, MALC's membership and strength as an organization depends on growing its membership. The illegal redistricting plans not only dilute Latino voter opportunities by failing to develop additional Latino and minority opportunity districts but thereby also denied MALC additional members and eliminated members as well. (Nueces County). MALC is thus directly impacted by a redistricting plan that limits, eliminates, and fails to include additional minority opportunity districts required by Section 2. *Warth*, 422 U.S. at 511.¹

b. Witnesses and summary of testimony

Plaintiff MALC intends to call Representative **Rafael Anchia** on the issue of standing, to describe the purpose and membership of MALC. He will also testify regarding the availability of additional compact majority minority districts in Dallas County, the common interests of minority voters in Dallas County, and will describe a change to his district boundaries adopted in the 2013 special session of the Texas Legislature.

c. Expert witnesses

George Korb will be offered to show plans he has drawn in various parts of the state

¹ MALC also relies on the standing of co-Plaintiffs LULAC and NAACP in the areas of Fort Bend, Harris, Dallas, Nueces, and Bell counties all of whom are seeking the same relief. *See e.g. Ruiz v. Estelle*, 161 F.3d 814 (1998). (intervenors and similarly situated litigants may not independently require standing if one co-litigant has standing and the intervenor or co-litigant is seeking the same relief).

that increase Latino and minority (coalition) opportunity districts.

Dr. Robert Brischetto will discuss the existence of racially polarized voting in the 2014 and 2016 elections.

d. Key exhibits

Plaintiff MALC will utilize the joint exhibits associated with Plan H391 with Mr. Korbelt and other witnesses. Plaintiffs will also rely on internal MALC documents showing membership and purpose of the organization. Finally, MALC will rely on Dr. Brischetto's report and the tables and exhibits associated with his report.

2. Regional Claims

a. El Paso

MALC does not complain of H358 with regard to El Paso

b. Nueces County

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 violates Section 2 of the Voting Rights Act in that Article III, § 26 of the Texas Constitution was used to avoid the creation of an additional majority Latino district in H358 in Nueces County. See Dkt. 897, MALC's Third Amended Complaint, ¶¶ 42-44, 74-75.

1) MALC Has Standing

a) MALC has Associational and Organizational Standing

See MALC's standing argument above. In addition, MALC membership in Nueces County included, when this case was first filed, a Latino Republican member whose district was eliminated in Plan H358 as it was in Plan H283.

2) Lay witnesses

MALC does not intend to offer any additional lay witnesses with regard to Nueces County, but rather intends to rely on this Court's evaluation of the formulation and impact of H283 in Nueces County since H358 makes no changes in Nueces County. *See* Dkt. 1365, pp. 32-40.

3) Expert witnesses

George Korbel will be offered to show plans he has drawn in Nueces County that increase Latino opportunity districts.

Dr. Robert Brischetto will discuss the existence of racially polarized voting in the 2014 and 2016 elections.

4) Key exhibits

MALC will submit and utilize the joint exhibits associated with Plan H391 as it relates to districts in Nueces County, with Mr. Korbel. MALC will rely on Dr. Brischetto's report and the tables and exhibits associated with his report.

c. Harris County

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 violates Section 2 of the Voting Rights Act in the failure of the State to create additional majority minority opportunity districts in H358 in Harris County. *See* Dkt. 897, MALC's Third Amended Complaint, ¶¶ 8, 49-50, and 74-75.

- 1) Plaintiff MALC has standing to present these claims as an organizational and associational plaintiff.

See MALC's standing argument above. In addition, MALC membership in Harris County includes a number of Latino, African American, and Asian American members.

2) Lay witnesses

MALC does not intend to offer any additional lay witnesses with regard to Harris County, but rather intends to rely on this Court's evaluation of the formulation and impact of H283 in Harris County. *See* Dkt. 1365, pp. 56-7.

3) Expert witnesses

George Korbel will be offered to show plans he has drawn in Harris County that increase minority opportunity districts.

MALC will rely on the testimony of experts for other Plaintiffs regarding the existence of racially polarized voting in the 2014 and 2016 elections.

4) Key exhibits

MALC will submit and utilize the joint exhibits associated with Plan H391 as it relates to districts in Harris County, with Mr. Korbel.

d. Fort Bend County

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 violates Section 2 of the Voting Rights Act in the failure of the State to create of additional majority minority opportunity districts in H358 in Fort Bend County. *See* Dkt. 897, MALC's Third Amended Complaint, ¶¶ 8, 51-53, 74-75.

- 1) Plaintiff MALC has standing to present these claims as an organizational and associational plaintiff.

See MALC's standing argument above.

2) Lay witnesses

MALC does not intend to offer any additional lay witnesses with regard to Fort Bend County, but, in the interest of time and the streamlining of trial presentation, will rely on witnesses offered by other plaintiffs.

3) Expert witnesses

George Korbel will be offered to show plans he has drawn in Fort Bend County that increase minority opportunity districts.

MALC will rely on the testimony of experts for other Plaintiffs regarding the existence of racially polarized voting in the 2014 and 2016 elections.

4) Key exhibits

MALC will submit and utilize the joint exhibits associated with Plan H391 as it relates to districts in Fort Bend County.

e. Bell/Lampasas Counties

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 violates Section 2 of the Voting Rights Act in the failure of the State to create additional majority minority opportunity districts in H358 in Bell County. *See* Dkt. 897, MALC's Third Amended Complaint, ¶¶ 8, 54-56, 74-75.

- 1) Plaintiff MALC has standing to present these claims as an organizational and associational plaintiff.

See MALC's standing argument above.

- 2) Lay witnesses

MALC does not intend to offer any additional lay witnesses with regard to Bell County, but rather intends to rely on this Court's evaluation of the formulation and impact of H283 in Bell County. *See* Dkt. 1365, pp. 75-77.

- 3) Expert witnesses

George Korbel will be offered to show plans he has drawn in Bell County that increase Latino opportunity districts.

MALC will rely on the testimony of experts for other Plaintiffs regarding the existence of racially polarized voting in the 2014 and 2016 elections.

4) Key exhibits

MALC will submit and utilize the joint exhibits associated with Plan H391 as it relates to districts in Bell County.

f. Dallas County

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 violates Section 2 of the Voting Rights Act in the failure of the State to create of additional majority minority opportunity districts in H358 in Dallas County. *See* Dkt. 897, MALC's Third Amended Complaint, ¶¶ 8, 57, 74-75.

- 1) Plaintiff MALC has standing to present these claims as an organizational and associational plaintiff.

See MALC's standing argument above. In addition, MALC membership in Dallas County includes a number of Latino members.

- 2) Lay witnesses

Plaintiff MALC intends to call Representative **Rafael Anchia** on the issue of standing, to describe the purpose and membership of MALC. He will also testify regarding the availability of additional compact majority minority districts in Dallas County, the common interests of minority voters in Dallas County, and will describe a change to his district boundaries adopted in the 2013 special session of the Texas Legislature. MALC also relies on this Court's evaluation of the formulation and impact of H283 in Dallas County. *See* Dkt. 1365, pp. 65-6.

- 3) Expert witnesses

George Korbel will be offered to show plans he has drawn in Dallas County that increase minority opportunity districts.

MALC will rely on the testimony of experts for other Plaintiffs regarding the existence of racially polarized voting in the 2014 and 2016 elections.

4) Key exhibits

MALC will submit and utilize the joint exhibits associated with Plan H391 as it relates to districts in Dallas County, with Mr. Korbel.

g. Tarrant County

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 violates Section 2 of the Voting Rights Act in the failure of the State to create additional majority minority opportunity districts in H358 in Tarrant County. See Dkt. 897, MALC's Third Amended Complaint, p.3 ¶ 8; p.16-17, ¶¶ 74-75.

- 1) Plaintiff MALC has standing to present these claims as an organizational and associational plaintiff.

See MALC's standing argument above. In addition, MALC membership in Tarrant County includes a Latino member.

- 2) Lay witnesses

MALC does not intend to offer any additional lay witnesses with regard to Tarrant County, but rather intends to rely on this Court's evaluation of the formulation and impact of H283 in Tarrant County. See Dkt. 1365, pp. 71.

- 3) Expert witnesses

George Korbel will be offered to show plans he has drawn in Tarrant County that increase minority opportunity districts.

MALC will rely on the testimony of experts for other Plaintiffs regarding the existence of racially polarized voting in the 2014 and 2016 elections.

- 4) Key exhibits

MALC will submit and utilize the joint exhibits associated with Plan H391 as it relates to districts in Tarrant County, with Mr. Korbel.

h. West Texas – Midland/Ector County Area

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 violates Section 2 of the Voting Rights Act in the failure of the State to create an additional majority Latino opportunity districts in H358 in the Midland/Ector County area. *See* Dkt. 897, MALC’s Third Amended Complaint, ¶¶ 8, 37-40, 74-75.

- 1) Plaintiff MALC has standing to present these claims as an organizational and associational plaintiff.

See MALC’s standing argument above. In addition, MALC membership in the West Texas area includes a Latino member.

- 2) Lay witnesses

Plaintiff MALC intends to rely on the testimony offered by MALC of Commissioner Luis Sanchez found at Trial Transcript Vol. 2, pp. 437-469, 7-15-14.

- 3) Expert witnesses

MALC will offer Dr. Robert Brischetto on racially polarized voting in the 2014 and 2016 elections.

- 4) Key exhibits

MALC will rely on Exhibits 33 and 43, which are the amendments offered during the 2013 Legislative session which show that Latino CVAP majority district can be created in West Texas.

i. Bexar County

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 diluted the voting strength of Latinos in Bexar County. *See* Dkt. 897, MALC’s Third Amended Complaint, ¶¶ 8, 58, 74-75. In its recent order regarding H283, this Court made findings concerning Bexar County, including intentional discrimination in the adoption of Plan H283 as

to HD 117. *See* Dkt. 1365, pp. 28-32. Texas has adopted this Court's interim remedy as to HD 117. However, this remedy could not take into consideration the intentional discrimination found by this Court. "[T]he burden rests on the State to prove that its proposed remedy *completely* cures the harm in this case." *See United States v. Virginia*, 518 U.S. 515, 547 (1196). (noting that the defendant "was obliged to show that its remedial proposal `directly address[ed] and relate[d] to' the violation").

- 1) Plaintiff MALC has standing to present these claims as an organizational and associational plaintiff.

See MALC's standing argument above. In addition, MALC membership includes several Latino members in Bexar County, including Rep. Philip Cortez who resides in the disputed district, HD 117.

- 2) Lay witnesses

MALC does not intend to offer any additional lay witnesses with regard to Bexar County, but rather intends to rely on this Court's evaluation of the formulation and impact of H283 in Bexar County, (See Dkt. 1365, pp. 28-32), and the State's defense of its interim remedy in curing the intentionally discriminatory defects of HD 117.

- 3) Expert witnesses

MALC will offer Dr. Robert Brischetto on racially polarized voting in the 2014 and 2016 elections.

- 4) Key exhibits

MALC will submit and utilize the joint exhibits associated with Plan H391 as it relates to districts in Bexar County, with Mr. Korbel.

B. Section 2 of the Voting Rights Act and Fourteenth Amendment– Intent - H358

1. Plan H358 as a Whole

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 violates Section 2 and the Fourteenth Amendment, in that Article III, § 26 was used to avoid the creation of additional majority Latino and majority minority (coalition) opportunity districts in H358. See Dkt. 897, MALC's Third Amended Complaint, ¶¶ 7, 10, 38- 45, 70-73, 77, and 83.

Plaintiff MALC has standing to present these claims as an organizational and associational plaintiff.

a. MALC Has Standing - MALC has Associational and Organizational Standing

See MALC's standing arguments above.

b. Lay witnesses

Plaintiff MALC intends rely on the testimony described above. In addition, MALC will offer the testimony of Trey Martinez Fischer who will testify regarding the *Village of Arlington Heights* factors on intentional discrimination as it relates to the 2013 special legislative session.

c. Expert witnesses

MALC will not offer an expert on intentional discrimination but will rely on the testimony of experts for other Plaintiffs. To the degree the existence of racially polarized voting pertains to a determination of intentional discrimination, MALC will present Dr. Robert Brischetto on racially polarized voting in the 2014 and 2016 elections.

d. Key exhibits

MALC will rely on 2017 MALC Exhibits 16-20, including the House Journal, describing floor debate on the redistricting bill considered and passed in the 2013 special legislative session, amendments offered during the debate, on the House floor and in committee that would create additional minority opportunity district.

2. Regional Claims of Intentional Discrimination

a. El Paso

MALC does not complain of H358 with regard to El Paso.

b. Nueces County

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 violates Section 2 of the Voting Rights Act and the Fourteenth Amendment, in that Article III, § 26 was used to avoid the creation of an additional majority Latino district in H358 in Nueces County and with the intent to discriminate. See Dkt. 897, MALC's Third Amended Complaint, ¶¶ 6-10, 42-44, ¶¶ 76-8.

1) MALC Has Standing

See MALC's standing argument above. In addition, MALC membership in Nueces County included, when this case was first filed, a Latino Republican member whose district was eliminated in Plan H358 as it was in Plan H283.

2) Lay witnesses

MALC does not intend to offer any additional lay witnesses with regard to Nueces County, but rather intends to rely on this Court's evaluation of the formulation and impact of H283 in Nueces County since H358 makes no changes in Nueces County. See Dkt. 1365, pp. 32-40.

3) Expert witnesses

George Korbelt will be offered to show plans he has drawn in Nueces County that increase Latino opportunity districts.

Dr. Robert Brischetto will discuss the existence of racially polarized voting in the 2014 and 2016 elections.

4) Key exhibits

MALC will submit and utilize the joint exhibits associated with Plan H391 as they relate to districts in Nueces County, with Mr. Korbel. MALC will rely on Dr. Brischetto's report and the tables and exhibits associated with his report.

c. Harris County

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 violates Section 2 of the Voting Rights Act and the 14th Amendment in the failure of the State to create additional majority minority opportunity districts in H358 in Harris County. See Dkt. 897, MALC's Third Amended Complaint, ¶¶ 8, 49-50, 74-75.

- 1) Plaintiff MALC has standing to present these claims as an organizational and associational plaintiff.

See MALC's standing argument above. In addition, MALC membership in Harris County includes a number of Latino and African American and Asian American members.

- 2) Lay witnesses

MALC does not intend to offer any additional lay witnesses with regard to Harris County, but rather intends to rely on this Court's evaluation of the formulation and impact of H283 in Harris County. See Dkt. 1365, pp. 56-7.

- 3) Expert witnesses

George Korbel will be offered to show plans he has drawn in Harris County that increase minority opportunity districts.

MALC will rely on the testimony of experts for other Plaintiffs regarding the existence of racially polarized voting in the 2014 and 2016 elections.

- 4) Key exhibits

MALC will submit and utilize the joint exhibits associated with Plan H391 as it relates to districts in Harris County, with Mr. Korbel.

d. Fort Bend County

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 violates Section 2 of the Voting Rights Act and the Fourteenth Amendment in the failure of the State to create additional majority minority opportunity districts in H358 in Fort Bend County. See Dkt. 897, MALC's Third Amended Complaint, ¶¶ 8, 51-53, 74-75.

- 1) Plaintiff MALC has standing to present these claims as an organizational and associational plaintiff.

See MALC's standing argument above.

- 2) Lay witnesses

MALC does not intend to offer any additional lay witnesses with regard to Fort Bend County.

- 3) Expert witnesses

George Korbel will be offered to show plans he has drawn in Fort Bend County that increase minority opportunity districts.

MALC will rely on the testimony of experts for other Plaintiffs regarding the existence of racially polarized voting in the 2014 and 2016 elections.

- 4) Key exhibits

MALC will submit and utilize the joint exhibits associated with Plan H391 as they relate to districts in Harris County.

e. Bell Counties

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 violates Section 2 of the Voting Rights Act and the Fourteenth Amendment in the fragmentation of the African American community in Killeen and the failure of the State to create additional majority

minority opportunity districts in H358 in Bell County. See Dkt. 897, MALC's Third Amended Complaint, ¶¶ 8, 54-56, and 76-7.

- 1) Plaintiff MALC has standing to present these claims as an organizational and associational plaintiff.

See MALC's standing argument above.

- 2) Lay witnesses

MALC does not intend to offer any additional lay witnesses with regard to Bell County, but rather, since the Bell County districts in H235 are identical to the districts in Bell County under H283, intends to rely on this Court's evaluation of the formulation and impact of H283 in Bell County. See Dkt. 1365, pp. 75-7.

- 3) Expert witnesses

George Korbel will be offered to show plans he has drawn in Bell County that increase Latino opportunity districts.

MALC will rely on the testimony of experts for other Plaintiffs regarding the existence of racially polarized voting in the 2014 and 2016 elections.

- 4) Key exhibits

MALC will submit and utilize the joint exhibits associated with Plan H391 as it relates to districts in Bell County.

- a. Dallas County

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 violates Section 2 of the Voting Rights Act and the Fourteenth Amendment, in Dallas County. See Dkt. 897, MALC's Third Amended Complaint, ¶¶ 8, 57, 76-7.

- 1) Plaintiff MALC has standing to present these claims as an organizational and associational plaintiff.

See MALC's standing argument above. In addition, MALC membership in Dallas County includes a number of Latino members.

2) Lay witnesses

Plaintiff MALC intends to call Representative **Rafael Anchia** on the issue of standing, to describe the purpose and membership of MALC. He will also testify regarding the availability of additional compact majority minority districts in Dallas County, the common interests of minority voters in Dallas County and will describe a change to his district boundaries adopted in the 2013 special session of the Texas Legislature. MALC also relies on this Court's evaluation of the formulation and impact of H283 in Dallas County. See Dkt. 1365, pp. 65-66.

3) Expert witnesses

George Korbelt will be offered to show plans he has drawn in Dallas County that increase minority opportunity districts.

MALC will rely on the testimony of experts for other Plaintiffs regarding the existence of racially polarized voting in the 2014 and 2016 elections.

4) Key exhibits

MALC will submit and utilize the joint exhibits associated with Plan H391 as it relates to districts in Dallas County, with Mr. Korbelt.

g. Tarrant County

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 violates Section 2 of the Voting Rights Act in the failure of the State to create additional majority minority opportunity districts in H358 in Tarrant County. See Dkt. 897, MALC's Third Amended Complaint, ¶¶ 8, 74-75.

- 1) Plaintiff MALC has standing to present these claims as an organizational and associational plaintiff.

See MALC's standing argument above. In addition, MALC membership in Tarrant County includes a Latino member.

2) Lay witnesses

MALC does not intend to offer any additional lay witnesses with regard to Tarrant County, but rather intends to rely on this Court's evaluation of the formulation and impact of H283 in Tarrant County. See Dkt. 1365, pp. 71.

3) Expert witnesses

George Korbelt will be offered to show plans he has drawn in Tarrant County that increase minority opportunity districts.

MALC will rely on the testimony of experts for other Plaintiffs regarding the existence of racially polarized voting in the 2014 and 2016 elections.

4) Key exhibits

MALC will submit and utilize the joint exhibits associated with Plan H391 as it relates to districts in Tarrant County, with Mr. Korbelt.

h. West Texas – Midland/Ector County Area

Plaintiff MALC does not assert an intentional discrimination claim as to the Midland/Ector County area.

i. Bexar County

Plaintiff MALC has submitted to this Court claims for relief asserting that H358 diluted the voting strength of Latinos in Bexar County. See Dkt. 897, MALC's Third Amended Complaint, ¶¶ 8, 58, 74-75. In its recent order regarding H283, this Court made findings concerning Bexar County, including intentional discrimination in the adoption of Plan H283 as to HD 117. See Dkt. 1365, pp. 28-32. Texas has adopted this Court's interim remedy as to HD

117. However, this remedy could not take into consideration the intentional discrimination found by this Court. “[T]he burden rests on the State to prove that its proposed remedy *completely* cures the harm in this case.” See *United States v. Virginia*, 518 U.S. 515, 547 (1196). (noting that the defendant “was obliged to show that its remedial proposal ‘directly address[ed] and relate[d] to’ the violation”).

C. Claims as to C235

1. Claims to C235 as a whole.

Plaintiff MALC has submitted to the Court claims for relief asserting that C235 violates Section 2 of the Voting Rights, because it results in Latino and minority vote dilution. Dkt. 897 ¶¶ 2, 8, 60-63. Plaintiff MALC also asserts that C235 was adopted with a discriminatory intent to dilute and minimize minority electoral opportunity in violation of both Section 2 of the Voting Rights Act and the 14th Amendment. Dkt. 897, ¶¶ 2-3, 58, 10, 64-71, 83.

As describe previously, MALC has standing as an associational and organizational plaintiff. Moreover, MALC has members in Dallas, Tarrant, Nueces, Harris, Travis, and Bexar counties. MALC intends to call the following witnesses: Korbel, Brischetto, Dr. Henry Flores, and Martinez Fischer. MALC will offer exhibits associated with Plans C283 and C285, as part of its proof.

2. Claims as to DFW/CD 30/CD 33

MALC has submitted to the Court claims for relief in DFW/CD 30/CD 33 in its general description of the manner in which C235 treated the minority voters of Texas. Dkt 897, ¶¶ 60-61, 72. MALC also made more specific allegations as to this area. Dkt. 897, ¶¶ 73.

As describe previously, MALC has standing as an associational and organizational plaintiff. Moreover, MALC has members in Dallas and Tarrant counties. MALC intends to call

the following witnesses: Korbel, and Martinez Fischer. MALC will offer exhibits associated with Plans C283 and C285, as part of its proof.

3. Claims as to Houston area

MALC has submitted to the Court claims for relief in the Houston area in its general description of the manner in which C235 treated the minority voters of Texas. Dkt 897, ¶¶ 60-61,

As describe previously, MALC has standing as an associational and organizational plaintiff. Moreover, MALC has members in Harris County. MALC intends to call the following witnesses: Korbel, and Martinez Fischer. MALC will offer exhibits associated with Plans C283 and C285, as part of its proof.

4. Austin area/CD 35

MALC has submitted to the Court claims for relief in the Austin/CD 35 area in its general description of the manner in which C235 treated the minority voters of Texas. Dkt 897, ¶¶ 60-61. More specifically, MALC plead the elimination of an effective crossover district as impacting the minority voters of the area. Dkt. 897, ¶¶ 68-9.

As describe previously, MALC has standing as an associational and organizational plaintiff. Moreover, MALC has members in Travis County. MALC intends to call the following witnesses: Korbel, Brischetto, Martinez Fischer. MALC will offer exhibits associated with Plans C283 and C285, as part of its proof.

5. CD 23

MALC has submitted to the Court claims for relief with regard to CD 23 in its general description of the manner in which C235 treated the minority voters of Texas. Dkt 897, ¶¶ 60-61. More specifically, MALC plead specific allegations about the dilution of the minority voters of the area as well. In addition MALC has alleged that the modifications made to CD 23 as

JOAQUIN G. AVILA
LAW OFFICE OF JOAQUIN G. AVILA
1160 North 192street, Apt. No. 3-214
Shoreline, Washington 98133
Texas State Bar # 01456150
(206) 724-3731
javila1948@outlook.com

CERTIFICATE OF SERVICE

I certify that, on July 4, 2017, I filed the foregoing advisory via the Court's ECF/CM system, which will serve a copy on all counsel of record.

/s/ Jose Garza

Jose Garza