

**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-CV-360-OLG-JES-XR
STATE OF TEXAS, ET AL.	§	CONSOLIDATED ACTION
	§	[Lead case]
Defendants	§	

**TASK FORCE PLAINTIFFS’
ADVISORY REGARDING THE PARTIES’ POSITIONS
ON REMEDY REGARDING HOUSE DISTRICT 90**

Pursuant to the Court’s Order of July 3, 2018 [Dkt. 1586], Plaintiffs Texas Latino Redistricting Task Force, et al. (“Task Force Plaintiffs”) submit this advisory regarding whether there is agreement on what remedy should be ordered for House District 90 (“HD90”) following the decision of the United States Supreme Court in *Abbott v. Perez*, 138 S. Ct. 2305 (2018). Task Force Plaintiffs were the only parties to challenge the 2013 changes to HD90 and accordingly have conferred with the State of Texas, *et al.* (“State Defendants”) regarding their position on the remedy for HD90. For the reasons set forth below, Task Force Plaintiffs take the position that the appropriate remedy is for this Court to defer to the HD90 boundaries for Tarrant County drawn by the Texas Legislature in 2011. The proposed remedial plan, which inserts the H283/H309 Tarrant County boundaries into H358, is found at H407 in RedAppl. The TLC map and plan packets for H407 are attached as Exhibits A and B to this Advisory. State Defendants oppose this proposed remedy.

The U.S. Supreme Court Decision

In *Abbott v. Perez*, the U.S. Supreme Court affirmed this Court’s ruling that “HD90 is an

impermissible racial gerrymander.” *Id.* at 2335. The Supreme Court concluded that the Texas Legislature, in modifying HD90 in 2013 could not justify its “drastic” changes to the boundaries of the district by pointing to an “actual ‘legislative inquiry’ that would establish the need for its manipulation of the racial makeup of the district.” *Id.* at 2334-2335 (2018).

The Proposed Remedy

The Task Force’s proposed remedy is composed entirely of boundaries enacted by Texas and thus adheres to the “general rule” that courts “should be guided by the legislative policies underlying the existing plan, to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act.” *See Perry v. Perez*, 132 S. Ct. 934, 941 (2012) *quoting Abrams v. Johnson*, 117 S. Ct. 1925, 1930 (1997) (internal quotation marks omitted). In *Perry*, the Court emphasized that “the district court [must ensure that it] appropriately confines itself to drawing interim maps that comply with the Constitution and the Voting Rights Act, without displacing legitimate state policy judgments with the court’s own preferences.” *Perry* 132 S. Ct. at 941.

The rule reiterated in *Perry* is found in the Court’s earlier decisions *Abrams v. Johnson*, 521 U.S. 74, 86 (1997) (approving “substantial changes to the existing plan” when “2 of 11 districts were found unconstitutional, on opposite sides of the State[.]”) and *Upham v. Seamon*, 102 S. Ct. 1518, 1521 (1982) (“a federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature[.]”).

The Task Force proposed remedy uses as a starting point Plan H358 – the 2013 House Plan enacted by Texas. Tarrant County is a “drop-in” county and can be modified without changing the statewide map H358. *See Perez v. Abbott*, 250 F. Supp. 3d 123, 204 (W.D. Tex. 2017) (describing “multi-district counties [as] ‘drop-in counties’”).

Second, H407 modifies district boundaries in Tarrant County *only* to conform to the 2011 House Plan enacted by State Defendants and ordered by this Court for the 2012 election cycle -- H283/H309.

The Task Force proposed remedy repairs the racial gerrymander found by this Court. When referring to the changes to HD90 in 2013, the Supreme Court cited to this Court’s findings at page 789-790 of its opinion on H358, which include the following changes:

- “Burnam successfully returned Como to his district.”
- “Kenney began re-working Plan H328 while keeping an eye on SSVR, which he discussed with Burnam.”
- “Kenney started by swapping whole precincts between the districts, but quickly began trading populations at the block level, using racial shading and HVAP as a proxy for SSVR.”
- “Burnam identified boundaries in the following neighborhoods and precincts that were split or relocated entirely in order to remove Anglo population from HD90: Samson Park, Montgomery Plaza Redevelopment, Precinct 4068, Precinct 4493, Precinct 1015, and Precinct 1674.”
- “In other cases, Hispanic areas were brought into HD90 to increase SSVR; Burnam identified portions of Precincts 4125, 1434, and 1408 as examples.”
- “The finished version (Plan H342 or ‘the Burnam amendment’) modified only the western boundary of the district by mostly trading populations with HD99 in an effort to return Como to HD90 while also keeping HD90’s SSVR above 50%.”

Perez, 138 S. Ct. at 2334 *citing Perez v. Abbott*, 267 F. Supp. 3d 750, 789-790 (W.D. Tex. 2017) *aff’d in part, rev’d in part and remanded*, 138 S. Ct. 2305 (2018). Plan H407 restores these split and relocated precincts, and also restores the Como precinct to HD99 where it was located in

H283/H309 before Texas undertook its racial gerrymander.

As a result, the Task Force Proposed remedy consists entirely of boundaries enacted by Texas either in 2011 or 2013. State Defendants supported HD90's 2011 boundaries in this case. *See* Dkt. 411 (Defendants' 2011 Post-Trial Brief urging denial of all relief requested by Plaintiffs with respect to H283); Dkt. 631 (State Defendants' Brief on Issues Relating to Interim Redistricting Plans urging same); Dkt. 668 (Joint Advisory Regarding Interim House Districts urging adoption of H303 which incorporated the H283 boundaries of HD90); Dkt. 1272 (State Defendants' 2014 Post-Trial Brief at 99-100, defending the boundaries of HD90 in H283); Dkt. 1276 (State Defendants' 2014 Proposed Findings of Fact and Conclusions of Law at 47-48, arguing same). This Court has not criticized the 2011 western boundary of HD90 (where the racial gerrymander of H358 was subsequently carried out).

In conclusion, Task Force Plaintiffs respectfully submit this advisory offering H407 as an appropriate remedy to the racial gerrymander of HD90. Task Force Plaintiffs also respectfully reserve the right to submit additional briefing in support of this or other proposed remedies during this remedial phase of the case.

DATED: August 6, 2018

Respectfully submitted,

MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND

/s/ Nina Perales

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CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Task Force Plaintiffs conferred with counsel for Defendants State of Texas, et al., regarding their position on the proposed remedy via telephone on the 28th day of June 2018, and e-mail on the 2nd day of August 2018. Counsel for Defendants responded on the 6th day of August 2018, saying that they oppose the proposed remedy.

/s/ Nina Perales
Nina Perales

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August, 2018, I served a copy of the foregoing document on all counsel who are registered to receive NEFs through this Court's CM/ECF system. All attorneys who are not registered to receive NEFs have been served via email.

/s/ Nina Perales

Nina Perales