IN THE 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]
MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES (MALC), *Plaintiffs,* v. STATE OF TEXAS, *et al.*, *Defendants.*	)	CIVIL ACTION NO. SA-11-CA-361-OLG-JES-XR [Consolidated case]
TEXAS LATINO REDISTRICTING TASK FORCE, *et al.*, *Plaintiffs,* v. RICK PERRY, *Defendant.*	)	CIVIL ACTION NO. SA-11-CA-490-OLG-JES-XR [Consolidated case]

MARGARITA V. QUESADA, *et al.,*	)	CIVIL ACTION NO.
	)	SA-11-CA-592-OLG-JES-XR
Plaintiffs,	)	[Consolidated case]
	)	
v.	)	
	)	
RICK PERRY, *et al.*,	)	
	)	
Defendants.	)	
	)	
	)	
JOHN T. MORRIS,	)	CIVIL ACTION NO.
	)	SA-11-CA-615-OLG-JES-XR
Plaintiff,	)	[Consolidated case]
	)	
v.	)	
	)	
STATE OF TEXAS, *et al.*,	)	
	)	
Defendants.	)	
	)	
	)	
EDDIE RODRIGUEZ, *et al.*,	)	CIVIL ACTION NO.
	)	SA-11-CA-635-OLG-JES-XR
Plaintiffs,	)	[Consolidated case]
	)	
v.	)	
	)	
RICK PERRY, *et al.*,	)	
	)	
Defendants.	)	

DEFENDANTS' ADVISORY CONCERNING EMERGENCY MOTION FOR MODIFICATION OF INJUNCTION

Defendants Rick Perry, in his official capacity as Governor, John Steen, in his official capacity as Secretary of State, and the State of Texas (collectively "Defendants") file this advisory to the Court concerning the Texas Latino

Redistricting Task Force Plaintiffs' Emergency Motion for Modification of Injunction filed earlier today. The Task Force's motion fails to identify an emergency that would justify any immediate action by this Court. Moreover, the impending mootness of this case due to the Texas Legislature's recent passage of new redistricting plans makes any action by this Court concerning the 2011 redistricting plans inappropriate at this time. Although these deficiencies alone are sufficient to deny relief, Defendants respectfully request that the Court provide them an opportunity to respond fully on the merits and that the Court hold a hearing before taking any action on the Task Force's motion.

ARGUMENT

I. The Motion Is Premature and Unfounded Because the Movants Fail to Identify an Emergency to Justify the Requested Relief.

The Task Force Plaintiffs' request for further injunctive relief is premature and unfounded because they fail to identify any emergency to justify immediate relief from the Court. The Task Force Plaintiffs' motion is based on the possibility that the State might implement the Legislature's 2011 redistricting plans following the Supreme Court's decision in *Shelby County, Alabama v. Holder*, No. 12-96 (U.S. June 25, 2013), *reversing* 679 F.3d 848 (D.C. Cir. 2012). They do not establish that this threat is substantial, however, because they identify no evidence to suggest that the State actually intends to implement the 2011 plans. The Task Force Plaintiffs also fail to establish the existence of an imminent threat, because even if the 2011 plans were implemented, that implementation would not begin until after the August 30, 2013 deadline established in Defendant's previous advisories.

The Legislature's recent enactment of new redistricting plans undermines any perceived threat that the State will move to implement the 2011 plans. On June 24, 2013, one day before the *Shelby County* decision, the Texas Legislature passed new redistricting plans for the Texas House of Representatives, Texas Senate, and Texas congressional districts. These plans were sent to the Governor for approval on June 24, 2013, and the Governor's veto power expires on July 15, 2013.[1] There is no reason to assume that these newly enacted plans will not become law. To the contrary, there is every reason to think the maps will become law and moot this case.

Furthermore, the Legislature's enactment of new redistricting plans counsels against further action on pending claims against the Legislature's 2011 redistricting plans until the Governor's veto power expires. *See, e.g.*, *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978) ("The Court has repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to preempt."); *White v. Weiser*, 412 U.S. 783, 794–95 (1973) ("[J]udicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so."). Given the impending

[1] The relevant provision of the Texas Constitution provides:

> If any bill shall not be returned by the Governor with his objections within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Legislature, by its adjournment, prevent its return, in which case it shall be a law, unless he shall file the same, with his objections, in the office of the Secretary of State and give notice thereof by public proclamation within twenty days after such adjournment.

See TEX. CONST. art. IV, § 14.

mootness of the 2011 redistricting plans, the proper course is to abstain from further action and avoid any potential interference with the legislative process until the Governor's veto power expires. *See, e.g.*, *Growe v. Emison*, 507 U.S. 25, 34 (1993) ("[A] federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it." (citations omitted)).

In addition to their failure to identify a substantial threat, the Task Force Plaintiffs' conspicuously fail to allege, much less demonstrate, that they face an *imminent* threat of injury if the Court does not modify its existing injunction. This omission is fatal to their request for further injunctive relief. *See, e.g.*, *Winter v. Natl. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) ("Our frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is likely in the absence of an injunction."); *Gladden v. Roach*, 864 F.2d 1196, 1198 (5th Cir. 1989) ("One seeking injunctive relief must demonstrate a real and immediate threat that he will be subject to the behavior which he seeks to enjoin."); *Chacon v. Granata*, 515 F.2d 922, 925 (5th Cir. 1975) ("An injunction is appropriate only if the anticipated injury is imminent and irreparable."). The suggestion that they "will suffer irreparable harm as Texas implements redistricting plans that dilute Latino voting strength and purposefully discriminate against Latino voters," Motion at 8, is nothing more than speculation. The Task Force Plaintiffs not only fail to demonstrate an imminent threat of irreparable injury, their own motion establishes that the alleged threat is remote. As the Task Force Plaintiffs state, "there is still ample time for the Court to finalize its review of

the 2011 plans before any such [election] deadlines arrive." Motion at 9. Defendants agree. In fact, the Defendants have already suggested a schedule that would give the Court until August 30, 2013, to rule on outstanding motions, accept further briefing, hold further hearings if necessary, and make a final determination of all outstanding claims. *See* Defendants' Advisory (Doc. 736) at 5, 11. The Defendants' agreement to postpone a final decision until late August does not support the inference that they plan to implement the challenged 2011 plans before that time.

The alleged threat of injury is further undermined by the fact that this Court's injunction against implementation of the 2011 redistricting plans, issued on September 29, 2011, remains in place. *See* Order Enjoining Implementation of Voting Changes (Doc. 380). Even if there were evidence that the State intended to implement the Legislature's 2011 plans—and there is none whatsoever—Defendants could not take any steps unless and until this Court vacated its existing injunction, which expressly prohibits implementation of those very plans. Whether or not the 2011 plans could technically become effective as law following the Supreme Court's decision in *Shelby County*, the Defendants' clear obligation to abide by this Court's orders, to say nothing of the threat of contempt, provides more than enough protection against the possibility that the State might attempt to conduct elections under the challenged plans. In any event, until there is some evidence that the State intends to implement the 2011 redistricting plans, modification of the existing injunction is unwarranted.

II. Further Relief Should Not Be Granted Until the Defendants Have Time to Respond and the Court Conducts a Hearing to Consider the Motion.

Defendants intend to respond fully to the Task Force Plaintiffs' motion, if necessary, within 7 days as provided by the local rules. *See* Local Court Rules of the U.S. District Court for the Western District of Texas, Rule CV-7(e)(2). If the Governor signs the redistricting plans within the next 7 days, the claims against previous plans will be moot, and a response to the Task Force Plaintiffs' motion may be unnecessary. If an earlier response is necessary, Defendants respectfully request that the Court provide notice and allow them to file a response before ruling on the motion.

Defendants request further that the Court withhold any further action until it holds a hearing on the Task Force Plaintiffs' motion to modify the injunction. Federal Rule of Civil Procedure 65(a)(1) provides, "No preliminary injunction shall be issued without notice to the adverse party." The Fifth Circuit has interpreted Rule 65's notice requirement "to require that where factual disputes are presented, the parties must have 'a fair opportunity and a meaningful hearing to present their differing versions of those facts before a preliminary injunction may be granted.'" *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009) (quoting *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996)).

CONCLUSION

For the reasons stated above, Defendants respectfully request that the Task Force Plaintiffs' motion be denied or, in the alternative, that the Court postpone any

decision on the motion until Defendants have an opportunity to respond fully on the merits and a hearing is held.

Dated: June 26, 2013

Respectfully submitted.

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

/s/ David C. Mattax
DAVID C. MATTAX
Texas Bar No. 13201600
Deputy Attorney General
for Defense Litigation

J. REED CLAY, JR.
Special Assistant and Senior Counsel
to the Attorney General

ANGELA COLMENERO
Assistant Attorney General

MATTHEW H. FREDERICK
Assistant Solicitor General

P.O. Box 12548, Capitol Station
Austin, TX 78711-2548
(512) 463-0150
(512) 936-0545 (fax)

ATTORNEYS FOR THE STATE OF TEXAS, RICK PERRY, AND JOHN STEEN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this filing was sent on June 26, 2013, via the Court's electronic notification system and/or email to the following counsel of record:

DAVID RICHARDS
Richards, Rodriguez & Skeith LLP
816 Congress Avenue, Suite 1200
Austin, TX 78701
512-476-0005
davidr@rrsfirm.com

RICHARD E. GRAY, III
Gray & Becker, P.C.
900 West Avenue, Suite 300
Austin, TX 78701
512-482-0061/512-482-0924 (facsimile)
Rick.gray@graybecker.com

ATTORNEYS FOR PLAINTIFFS PEREZ, DUTTON, TAMEZ, HALL, ORTIZ, SALINAS, DEBOSE, and RODRIGUEZ

JOSE GARZA
Law Office of Jose Garza
7414 Robin Rest Dr.
San Antonio, Texas 78209
210-392-2856
garzpalm@aol.com

MARK W. KIEHNE
mkiehne@lawdcm.com
RICARDO G. CEDILLO
rcedillo@lawdcm.com
Davis, Cedillo & Mendoza
McCombs Plaza
755 Mulberry Ave., Ste. 500
San Antonio, TX 78212
210-822-6666/210-822-1151 (facsimile)

ATTORNEYS FOR MEXICAN AMERICAN LEGISLATIVE CAUCUS

GERALD H. GOLDSTEIN
ggandh@aol.com
DONALD H. FLANARY, III
donflanary@hotmail.com
Goldstein, Goldstein and Hilley
310 S. St. Mary's Street
San Antonio, TX 78205-4605
210-226-1463/210-226-8367 (facsimile)

PAUL M. SMITH, MICHAEL B. DESANCTIS, JESSICA RING AMUNSON
Jenner & Block LLP
1099 New York Ave., NW
Washington, D.C. 20001
202-639-6000

J. GERALD HEBERT
191 Somervelle Street, # 405
Alexandria, VA 22304
703-628-4673
hebert@voterlaw.com

JESSE GAINES
P.O. Box 50093
Fort Worth, TX 76105
817-714-9988
gainesjesse@ymail.com

ATTORNEYS FOR PLAINTIFFS QUESADA, MUNOZ, VEASEY, HAMILTON, KING and JENKINS

NINA PERALES
nperales@maldef.org
MARISA BONO
mbono@maldef.org
Mexican American Legal Defense
and Education Fund
110 Broadway, Suite 300
San Antonio, TX 78205
210-224-5476/210-224-5382 (facsimile)
MARK ANTHONY SANCHEZ
masanchez@gws-law.com
ROBERT W. WILSON
rwwilson@gws-law.com
Gale, Wilson & Sanchez, PLLC
115 East Travis Street, Ste. 1900
San Antonio, TX 78205
210-222-8899/210-222-9526 (facsimile)

ATTORNEYS FOR TEXAS LATINO REDISTRICTING TASK FORCE, CARDENAS, JIMENEZ, MENENDEZ, TOMACITA AND JOSE OLIVARES, ALEJANDRO AND REBECCA ORTIZ

JOHN T. MORRIS
5703 Caldicote St.
Humble, TX 77346
281-852-6388

JOHN T. MORRIS, PRO SE

MAX RENEA HICKS
Law Office of Max Renea Hicks
101 West Sixth Street Suite 504
Austin, TX 78701
512-480-8231/512/480-9105 (facsimile)

ATTORNEY FOR PLAINTIFFS CITY OF AUSTIN, TRAVIS COUNTY, ALEX SERNA, BEATRICE SALOMA, BETTY F. LOPEZ, CONSTABLE BRUCE ELFANT, DAVID GONZALEZ, EDDIE RODRIGUEZ, MILTON GERARD WASHINGTON, and SANDRA SERNA

LUIS ROBERTO VERA, JR.
Law Offices of Luis Roberto Vera, Jr. &
Associates
1325 Riverview Towers
San Antonio, Texas 78205-2260
210-225-3300
irvlaw@sbcglobal.net
GEORGE JOSEPH KORBEL
Texas Rio Grande Legal Aid, Inc.
1111 North Main
San Antonio, TX 78213
210-212-3600
korbellaw@hotmail.com

ATTORNEYS FOR INTERVENOR-PLAINTIFF LEAGUE OF UNITED LATIN AMERICAN CITIZENS

ROLANDO L. RIOS
Law Offices of Rolando L. Rios
115 E Travis Street, Suite 1645
San Antonio, TX 78205
210-222-2102
rrios@rolandorioslaw.com

ATTORNEY FOR INTERVENOR-PLAINTIFF HENRY CUELLAR

GARY L. BLEDSOE
Law Office of Gary L. Bledsoe
316 W. 12th Street, Ste. 307
Austin, TX 78701
512-322-9992/512-322-0840 (facsimile)
garybledsoe@sbcglobal.net

ATTORNEY FOR INTERVENOR-PLAINTIFFS TEXAS STATE CONFERENCE OF NAACP BRANCHES, TEXAS LEGISLATIVE BLACK CAUCUS, EDDIE BERNICE JOHNSON, SHEILA JACKSON-LEE, ALEXANDER GREEN, HOWARD JEFFERSON, BILL LAWSON, and JUANITA WALLACE

STEPHEN E. MCCONNICO
smcconnico@scottdoug.com
SAM JOHNSON
sjohnson@scottdoug.com
S. ABRAHAM KUCZAJ, III
akuczaj@scottdoug.com
Scott, Douglass & McConnico
One American Center
600 Congress Ave., 15th Floor
Austin, TX 78701
512-495-6300/512-474-0731 (facsimile)

ATTORNEYS FOR PLAINTIFFS CITY OF AUSTIN, TRAVIS COUNTY, ALEX SERNA, BALAKUMAR PANDIAN, BEATRICE SALOMA, BETTY F. LOPEZ, CONSTABLE BRUCE ELFANT, DAVID GONZALEZ, EDDIE RODRIGUEZ, ELIZA ALVARADO, JOSEY MARTINEZ, JUANITA VALDEZ-COX, LIONOR SOROLA-POHLMAN, MILTON GERARD WASHINGTON, NINA JO BAKER, and SANDRA SERNA

CHAD W. DUNN
chad@brazilanddunn.com
K. SCOTT BRAZIL
scott@brazilanddunn.com
Brazil & Dunn
4201 FM 1960 West, Suite 530
Houston, TX 77068
281-580-6310/281-580-6362 (facsimile)

ATTORNEYS FOR INTERVENOR-DEFENDANTS TEXAS DEMOCRATIC PARTY and BOYD RICHIE

VICTOR L. GOODE
Asst. Gen. Counsel, NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215-5120
410-580-5120/410-358-9359 (facsimile)
vgoode@naacpnet.org

ATTORNEY FOR TEXAS STATE CONFERENCE OF NAACP BRANCHES

ROBERT NOTZON
Law Office of Robert S. Notzon
1507 Nueces Street
Austin, TX 78701
512-474-7563/512-474-9489 (facsimile)
robert@notzonlaw.com
ALLISON JEAN RIGGS
ANITA SUE EARLS
Southern Coalition for Social Justice
1415 West Highway 54, Ste. 101
Durham, NC 27707
919-323-3380/919-323-3942 (facsimile)
anita@southerncoalition.org

ATTORNEYS FOR TEXAS STATE CONFERENCE OF NAACP BRANCHES, EARLS, LAWSON, WALLACE, and JEFFERSON

DONNA GARCIA DAVIDSON
PO Box 12131
Austin, TX 78711
512-775-7625/877-200-6001 (facsimile)
donna@dgdlawfirm.com
FRANK M. REILLY
Potts & Reilly, L.L.P.
P.O. Box 4037
Horseshoe Bay, TX 78657
512-469-7474/512-469-7480 (facsimile)
reilly@pottsreilly.com

ATTORNEYS FOR DEFENDANT STEVE MUNISTERI

Via Email
JOAQUIN G. AVILA
P.O. Box 33687
Seattle, WA 98133
206-724-3731/206-398-4261 (facsimile)
jgavotingrights@gmail.com

ATTORNEYS FOR MEXICAN AMERICAN LEGISLATIVE CAUCUS

KAREN M. KENNARD
2803 Clearview Drive
Austin, TX 78703
(512) 974-2177/512-974-2894 (facsimile)
karen.kennard@ci.austin.tx.us

ATTORNEY FOR PLAINTIFF CITY OF AUSTIN

DAVID ESCAMILLA
Travis County Asst. Attorney
P.O. Box 1748
Austin, TX 78767
(512) 854-9416
david.escamilla@co.travis.tx.us

ATTORNEY FOR PLAINTIFF TRAVIS COUNTY

/s/ David C. Mattax
DAVID C. MATTAX