

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

SHANNON PEREZ, et al.,)	
)	
Plaintiffs)	
)	
and)	CIVIL ACTION NO:
)	SA-11-CA-360-OLG-JES-XR
)	(consolidated, lead case)
MEXICAN AMERICAN LEGISLATIVE)	
CAUCUS, TEXAS HOUSE OF)	
REPRESENTATIVES (MALC))	
)	
Plaintiffs)	
)	
v.)	
)	
STATE OF TEXAS; RICK PERRY,)	
In his official capacity as Governor of the)	
State of Texas; DAVID DEWHURST,)	
In his official capacity as Lieutenant)	
Governor of the State of Texas; JOE)	
STRAUS, in his official capacity as)	
Speaker of the Texas House of)	
Representatives)	
Defendants)	

PLAINTIFF MALC'S THIRD AMENDED COMPLAINT

1. This is a redistricting lawsuit. This action is brought pursuant to Section 2 of the Voting Rights Act, 42 U.S.C. § 1973 *et seq.*, and the Fourteenth and Fifteenth Amendments to the United States Constitution, 42 U.S.C. § 1983. Plaintiff brings this action requesting declaratory and injunctive relief against the Defendants to challenge the redistricting plans adopted by the State of Texas for the Texas House of Representatives and United States House of Representatives.

2. Plaintiff brings this action challenging the plans adopted by the State of Texas in 2011 and 2013 for Texas House of Representatives districts (House districts) and for United

States House of Representatives districts (Congressional districts). Population growth in the State over the last decade was predominantly Latino and minority. As a result, increased Latino and minority opportunity districts could have and should have been included in the new redistricting plans for both the Texas House districts and the Congressional districts. The plans adopted by the State failed to increase Latino and minority opportunity districts. Instead, the plans were developed to minimize and limit Latino and minority electoral opportunities. These plans, therefore, dilute the voting strength of Latino and minority voters of Texas in violation of Section 2 of the Voting Rights Act.

3. Moreover, both of the sets of challenged plans incorporate many of the same features that were adopted with the purpose of minimizing minority electoral opportunities.

4. Plaintiff also brings this action challenging both the 2011 and 2013 plans adopted by the State of Texas for Texas House districts because the plans used population variances to gain racial and partisan advantage in violation of the Fourteenth Amendment's one person, one vote principle.

5. In addition, Plaintiff brings this action challenging the pre-2011 districts for the Texas House of Representatives and the United States House of Representatives in Texas because they also violate the provisions of one person, one vote requirements of the 14th Amendment of the United States Constitution.

6. Plaintiff also brings this action to challenge the manner in which the Defendants applied the redistricting requirement of the Texas Constitution regarding the Texas House of Representatives, embodied in Article III, § 26, commonly referred to as the "whole county rule." The State of Texas' use of Article III, § 26 in both the 2011 and 2013 enactments, to avoid

drawing Latino and minority opportunity districts otherwise required by § 2 of the Voting Rights Act, also violates § 2.

7. The Defendants have enforced Article III, § 26, of the Texas Constitution in a manner that will diminish Latino voting strength. Enforcement of Article III, § 26 in the manner employed by the State has diminished the opportunity of Latino voters of Texas to participate in the political process by limiting the number of majority Latino districts that can be developed consistent with the requirements of the Voting Rights Act and the Fourteenth and Fifteenth Amendments of the United States Constitution. The Defendants have used the requirements of Article III, § 26 as an excuse to avoid the drawing of Hispanic Citizen Voting Age Population majority districts justified by the significant increase in Latino population over the last decade.

8. The Defendants have also packed and cracked politically cohesive Latino and minority communities, resulting in fewer Latino majority districts in both the 2011 and 2013 enactments.

9. The Defendants also consistently overpopulated Latino majority districts and consistently under-populated majority Anglo districts to limit and diminish Latino voting strength. Such use of population variances violates the one person, one vote rule of the 14th Amendment.

10. With the racial gerrymanders manifest in the 2011 and 2013 plans, which resulted in diminished and limited Latino and African American voting strength, the Defendants violated Section 2 of the Voting Rights Act and the 15th and 14th Amendments.

I. JURISDICTION

11. Plaintiff's complaint arises under the United States Constitution and federal statutes. This court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 1988.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

13. Plaintiff seeks declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

14. Plaintiff requests convening of a three-judge court pursuant to 28 U.S.C. § 2284.

II. PARTIES

15. Plaintiff, Mexican American Legislative Caucus, Texas House of Representatives (hereinafter MALC), is the nation's oldest and largest Latino legislative caucus. MALC is a non-profit organization established 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. Many of its members are elected from and represent constituencies in majority Latino districts and many of its members are Latino. Moreover, some of the members reside in overpopulated Texas House districts and United States House of Representatives districts. The challenged plans incorporate districts that impact on MALC members both as minority voters of the districts and as minority elected representatives.

16. Defendant is the State of Texas. The State of Texas is a political subdivision covered under the provisions of the Voting Rights Act and responsible for the actions of its officials with regard to state-wide redistricting.

17. Defendant Rick Perry is the Governor of the State of Texas. Pursuant to Article IV, § 1 of the Texas Constitution, he is the chief executive officer of the Defendant State of Texas. He is sued in his official capacity.

III. FACTS

18. Plaintiff MALC is the nation's oldest and largest Latino legislative caucus. MALC is a non-profit organization established 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. Many of its members are elected from and represent constituencies in majority Latino districts and many of its members are Latino and some are African American. Some of the members of MALC reside in and represent districts that have population substantially greater than the ideal district size for those types of districts. Moreover, the members of MALC are registered voters in Texas and participate in state and local elections.

19. On or about February 17, 2011, the United States Department of Commerce and the United States Census Bureau released to the State of Texas the population data gathered as a result of the conduct of the 2010 Census.

20. The information released to the State of Texas showed that the population of Texas had increased to 25,145,561 for 2010. The population of Texas, according to the 2010 Census, had increased over the decade by about 20% from the 2000 population of 20,851,820.

21. According to the 2010 Census, the Hispanic population of Texas grew to 9,460,921 from 6,669,666 in the 2000 Census. This was an increase of about 42%. Moreover, according to the 2010 Census, Hispanic growth accounted for about 65% of the overall growth of Texas.

22. The numbers released to the State of Texas by the Census Bureau in February of 2011 have been used to redistrict the Texas House of Representatives. The redistricting legislation for the Texas House districts, H.B. 150, was signed by the Governor on June 17, 2011. The redistricting legislation for the United States House of Representatives, S.B. 4, was passed by the Texas Legislature on or about June 15, 2011.

23. The 2011 enactment for redistricting of the Texas House of Representative never became effective in law. The District Court for the District of Columbia determined that the 2011 plan for the Texas House diminished or retrogressed minority voting strength in a number of districts. It also determined that the “full record strongly suggests that the retrogressive effect we have found may not have been accidental.” *Texas v. United States*, 887 F. Supp. 2d 133, 177-178, (D.D.C. 2012) vacated and remanded on other grounds, 570 U.S. _____, 2013 U.S. LEXIS 4927 (U.S., June 27, 2013).

24. With regard to the Texas House plan, the D.C. Court found that the enacted plan had the “effect of abridging minority voting rights in four ability districts – HD’s 33, 35, 117 and 149 – and that Texas did not create any new ability districts to offset those losses.” *Id.* at 51. Thus, the enacted plan was retrogressive and could not be precleared. *Id.* The D.C. Court also expressed concern about the manner in which the mapdrawers used “deliberate, race-conscious method[s]” to dilute minority voting power, specifically noting the manner in which they switched high-turnout for low-turnout Hispanic voters and cracked VTD’s along racial lines. *Id.* at 70-71.

25. However the 2011 Texas House enactment was abandoned by the State of Texas with the enactment in 2013 of S.B. 3. S.B. 3 (H358) maintained most of the districts exactly as

they were adopted in 2011 and made modifications primarily based on a Court Ordered Interim Redistricting plan.

26. The 2011 enactment for redistricting of the United States House of Representatives (Congressional Districts) never became effective in law. The District Court for the District of Columbia determined that the 2011 plan for the Texas Congressional districts diminished or retrogressed minority voting strength in a number of districts and also found that Texas engaged in intentional discrimination against African-American and Latino citizens in enacting the 2011 Congressional redistricting plans. *Id.* at 161.

27. The 2011 enactment by the State of Texas of Congressional districts was abandoned by the State of Texas with the enactment of S.B. 4 (C235).

28. According to the 2010 Census, the pre-2011 redistricting for the Texas House of Representatives districts had population disparities between the most and least populated district, or a “top to bottom deviation,” of over 109%. This population disparity far exceeds the allowable deviation under the United States Constitution. The overpopulated districts for the Texas House of Representatives include District 40 in Hidalgo County, with a deviation of over +28%, and District 36 in Hidalgo County, with a deviation of over +20%.

29. According to the 2010 Census, the pre-2011 redistricting for the Texas Congressional districts had population disparities between the most populated and least populated districts, or “top to bottom” deviation, of over 48%. This population disparity far exceeds the allowable deviation under the United States Constitution. The overpopulated districts for the United States House of Representatives include District 15 in Hidalgo County, with a deviation of over +12%, and District 28 in Hidalgo County, with a deviation of about +22%.

30. The United States Supreme Court recently explained and articulated that the standard for compliance with the one person, one vote principle does not provide a complete safe harbor, even when a plan has less than a 10% total deviation. Unless the jurisdiction can articulate a legitimate non-racial, non-political reason for its deviation, districts should be as equal in population as is practicable. *Cox v. Larios*, 159 L. Ed. 2d 831, 833 (2004).

31. The State's pre-2011, 2011, and 2013 redistricting plans contain deviations that far exceed permissible limits under the United States Constitution. As described above, both of the pre-2011 plans for Texas House of Representatives and United States House of Representatives far exceed permissible deviation limits. Moreover, the 2011 and 2013 plans adopted by the State of Texas for the Texas House of Representatives, have a top to bottom deviation of 9.9% and 9.85% respectively. These deviations were achieved by overpopulating a majority of the Latino majority districts that can be overpopulated and under-populating a majority of Anglo majority districts. The deviation cannot be justified by legitimate state redistricting interests.

32. Elections in Texas continue to be racially polarized.

33. Latinos generally vote as a group and are politically cohesive.

34. African Americans in Texas generally vote as a group and are politically cohesive.

35. Latinos and African Americans in Texas generally vote as a group and are politically cohesive.

36. Anglos in Texas generally vote as group, are politically cohesive, and vote sufficiently as a block to defeat the preferred candidate of Latino and African American voters absent fair and equitable majority-minority single-member districts.

TEXAS HOUSE

37. According to the 2010 Census the Latino population of Midland County grew by over 57.05% while non-Hispanic white population diminished grew by only 1.1%. In addition the Latino population of Ector County grew by over 40.98% while the non-Hispanic white population diminished over the decade in Ector County.

38. Pre-textually, the Defendants asserted that in its efforts to comply with Article III, § 26 of the Texas Constitution, they would not to explore, consider or develop a Latino citizen voting age population majority district in the Midland/Odessa area of West Texas.

39. Counsel to the Committee on Redistricting, Mr. Jeff Archer, advised that where Section 2 districts were available, the requirements of Article III, § 26 would have to yield.

40. During the Legislative sessions in 2011 and during Special Session of the Legislature in 2013 on redistricting, amendments to the enacted plans with putative redistricting plans were offered, in committee and on the House floor, by the Chairman of the MALC, Rep. Trey Martinez Fischer, and others that established that compact and contiguous districts anchored in Midland and Odessa with a Latino citizen voting age population of over 50% were available. A similar district created in a multi-county district based in Lubbock, was also demonstrated by the amendments offered by the Chairman of MALC.

41. During the debate on the amendments offered by Rep. Martinez Fischer and others, the sponsor of the redistricting bills explained that the amendments would have to be rejected because they violated the requirements of Article III, § 26.

42. The 2011 enactment for redistricting the State House of Representatives eliminated a majority Latino citizen voting age population district in Nueces County.

43. The 2013 enactment for redistricting the State House of Representatives, S.B. 3

continues to exclude the majority Latino citizen voting age population district in Nueces County.

44. During the Legislative Special Session on redistricting in 2013, an amendment to S.B. 3 with putative redistricting plans was offered, on the House floor, by the Chairman of the MALC, Rep. Trey Martinez Fischer. This amendment established that an additional compact and contiguous district, anchored in Nueces County, with a Latino citizen voting age population of over 50% was available.

45. During the debate on the amendments offered by Rep. Martinez Fischer, the sponsor of the redistricting bills explained that the amendment would have to be rejected because it violated the requirements of Article III, § 26.

46. According to the 2010 Census, the total population of Harris County is 4,029,459. The ideal district size in 2011 for the Texas House of Representatives, according to the 2010 Census, is 167,637 persons. Therefore, the number of ideal districts for Harris County is 24.41.

47. In its efforts to comply with Article III, § 26 of the Texas Constitution, Texas allocated 24 districts to Harris County for the 2011 redistricting cycle and was maintained at that level in the State's 2013 enactment.

48. In prior litigation, this Court developed an interim redistricting plan for Harris County that created one additional Latino opportunity district above that contained in the 2011 enactment (H.D. 144). S.B. 3 includes that district.

49. However, population growth justifies the addition of at least one more minority opportunity district in Harris County.

50. During the Legislative Special Session on redistricting in 2013, an amendment to S.B. 3 with putative redistricting plans was offered, on the House floor, by the Chairman of the

MALC, Rep. Trey Martinez Fischer. This amendment established that an additional compact and contiguous district, anchored in Harris County, with a minority citizen voting age population of over 50% was available.

51. In Fort Bend County, the minority population over the decade increased by over 95.59%. Fully, 79.26% of the population growth in Fort Bend County was minority population growth. Yet, no new minority opportunity districts are contained in S.B. 3 in the Fort Bend County area. Instead the minority population of Fort Bend County was unnecessarily fragmented to minimize its political strength in both the 2011 enactment and the 2013 enactment.

52. During the Legislative Special Session on redistricting in 2013, an amendment to S.B. 3 with putative redistricting plans was offered, on the House floor, by the Chairman of the MALC, Rep. Trey Martinez Fischer. This amendment established that an additional compact and contiguous district, anchored in Fort Bend County, with a minority citizen voting age population of over 50% was available.

53. Neither the 2011 enacted plan nor the 2013 enacted plan for the Texas House of Representatives contains such a district in the Fort Bend County area.

54. In Bell County, African American and Latino population growth exceeded over 51.64%. In the City of Killeen in Bell County, the minority community is geographically compact and politically cohesive. Both the 2011 enacted plan and the 2013 enacted plan, S.B. 3, unnecessarily fragments the minority community of Killeen to minimize its political impact on Texas House elections.

55. During the Legislative Special Session on redistricting in 2013, an amendment to S.B. 3 with putative redistricting plans was offered, on the House floor, by the Chairman of the MALC, Rep. Trey Martinez Fischer and by Representative Yvonne Davis. These amendments

established that an additional compact and contiguous district, anchored in Bell County, with a minority citizen voting age population of over 50% was available.

56. Neither the 2011 enacted plan nor the 2013 enacted plan for the Texas House of Representatives contains such a district in Bell County.

57. Defendants also have employed redistricting gerrymandering techniques such as packing, cracking, and overpopulating minority Texas House districts in order to minimize minority opportunity districts. For instance, fragmentation of minority population while at the same time overpopulating Latino majority districts in Dallas County led to the failure to create at least one and possibly two additional minority opportunity house districts in Dallas County in both 2011 and 2013. Plans that reduced the population variance in Latino districts and reduced the fragmentation of minority voters in Dallas County were offered as amendments in both 2011 and 2013 and were rejected.

58. The 2011 enacted plan also actively disenfranchised Latino voters in Bexar County, Texas. In 2010, in HD 117, a state representative district in western Bexar County, elected a Hispanic Republican named John Garza. In creating a district to safely re-elect Rep. Garza the state impermissibly focused on race by targeting low-turnout Latino precincts. The HCVAP was increased to 63.8%, but the Spanish Surname Voter Registration (SSVR) actually decreased. The State clearly focused on low-turnout Latino precincts. The State's intention was made all the more clear by Rep. Garza's admission that he "wanted to get more Anglo numbers" into his district is further evidence of racial gerrymandering and evidence of racially discriminatory intent.

59. The 2011 enacted plan was also infected with discriminatory purpose because of the State's actions in El Paso County, Texas in the State House Plan. The border between HDs

77 and 78 had a bizarre shape with “deer antler” protrusions that split multiple precincts between these two districts. The high number of precincts splits within the deer antler protrusions strongly indicates that the State sought to divide these voters along racial lines. To date, the State has offered no explanation as to why the precincts were split. These cartographic choices are strong evidence of racially discriminatory intent.

TEXAS CONGRESSIONAL DISTRICTS

GENERALLY

60. As a result of the 2010 Census, the Texas Congressional delegation for the United States House of Representatives increased from 32 to 36 members.

61. The increase in the Texas Congressional delegation was directly attributable to the growth in Latino and minority population growth in the State; yet the Defendants failed to increase the number of minority Congressional opportunity districts, beyond those created by this Court.

62. The population growth of Latino and minority population in South and Central Texas justifies the creation of an additional minority opportunity Congressional district in the South/Central Texas region.

63. During the Legislative Sessions on redistricting in 2011 and 2013, amendments to the enacted plans with putative redistricting plans were offered, by a number of minority Representatives. These amendments established that additional compact and contiguous districts with a minority citizen voting age population of over 50% were available. These plans were never seriously considered.

CONGRESSIONAL DISTRICT 23

64. A detailed review of the legislative history of the 2011 enactments shows that the State's mapdrawers consciously replaced many of the district's active Hispanic voters with low-turnout Hispanic voters in an effort to strengthen the voting power of CD 23's Anglo citizens. In other words, they sought to reduce Hispanic voters' ability to elect without making it look like anything in CD 23 had changed. As a result, the district court for the district of Columbia found that in the 2011 enactment CD 23 was a lost ability to elect minority district. *Texas v. United States*, 887 F. Supp. 2d at 155-7. CD 23 in the 2013 enactment is identical to the CD 23 contained in the interim plan in *Perez v. Perry* developed as a result of a finding that Plaintiffs claims there were not insubstantial. However, the district insufficiently augments Latino voting strength to remedy the intentional attempt to diminish Latino voting strength in CD 23.

CONGRESSIONAL DISTRICT 27

65. The current 27th District is anchored in Nueces County and represented by Congressman Farenthold. Before Rep. Farenthold's election, the 27th District had been represented by Solomon Ortiz, Sr. The geography of the old 27th District was made up of parts of Cameron and San Patricio Counties and all of Nueces, Willacy, Kleberg, and Kenedy Counties.

66. The new 27th District joins Nueces County with heavily Anglo counties to its north: all of Refugio, Aransas, Calhoun, Matagorda, Jackson, Victoria, Wharton, and Lavaca Counties; and parts of San Patricio, Gonzales, Caldwell, and Bastrop Counties. Nueces County has a population of 340,223, of which 206,293 are Hispanic, or 60.635% of the population of the County. The Counties that Nueces has been combined with to form the new 27th District have a Hispanic population of only 39.92%, effectively diluting the voting strength of the Hispanics of Nueces County.

67. The voting strength of the Latino population of Nueces County has thus been diminished in both the 2011 and 2013 enactment.

CONGRESSIONAL DISTRICT 25

68. Congressional District 25 was an effective crossover district in pre-2011 plan. The District Court for the District of Columbia found that the elimination of CD 25 as an effective crossover district is a retrogression of minority voting strength. Retrogression of minority voting strength is a per se violation of Section 2 of the Voting Rights Act.

69. Both the 2011 and 2013 Texas enactments of redistricting plans for congressional districts eliminate CD 25 as an effective crossover district.

INTENTIONAL DISCRIMINATION

70. Latinos and African Americans in Texas continue to suffer the effects of historical discrimination in the areas of education, income, and housing. In addition, primary elections in Texas continue the use of majority vote requirements. Elections in Texas still require the use of place system and majority vote. Primaries in Texas require a majority vote to secure election. In addition, racially polarized voting continues to infect elections at all levels of government. Texas has a long history of discrimination against minorities in voting. Finally, Latinos in Texas continue to be under-represented in the Texas House and the Texas delegation to the United States House of Representatives.

71. In the enactment of redistricting plans in both 2011 and 2013 Texas established rules different from what is used with enactments generally thus departing from traditional practices. For example, special rules for accepting amendments that precluded all but the most inconsequential changes were used in the 2013 redistricting enactments. For instance no changes would be accepted but those agreed to by all affected members. Even so, in the 2013 session,

among the few acceptable amendments was one that resulted in a retrogression of minority voting strength in HD 90. The Texas House and Senate in both 2011 and 2013 passed redistricting legislation without serious consideration of minority voting interests.

72. In both 2011 and 2013, the redistricting enactments passed by Texas make substantial intrusions into cohesive minority communities, fragmenting minority voting communities and diminishing minority voting strength throughout the maps.

73. Latino and African American voters in Dallas and Tarrant Counties have been splintered and fragmented in both 2011 and 2013 to diminish their ability to effectively participate in the political process. Elimination of the unconstitutional fragmentation when combined with the significant population growth of the area will naturally result in an additional minority majority congressional district and one to three new Texas House Districts in Dallas County.

FIRST CLAIM FOR RELIEF – DISCRIMINATORY RESULT

74. The allegations contained in paragraphs 1 through 73 are alleged as if fully set forth herein.

75. Plaintiff's cause of action arises under Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973. The Defendants are in violation of the Voting Rights Act because the State Defendants: have failed provide sufficient Latino and minority opportunity districts in the 2011 and 2013 redistricting enactments in the face of racial bloc voting and dramatic minority population growth; employed redistricting gerrymandering techniques such as packing and cracking of minority communities to limit and have avoided drawing Latino and minority opportunity districts in; used redistricting criteria, such as the "whole county" rule in an inconsistent and unjustifiable pretext to limit and avoid drawing Latino and minority opportunity

districts for Texas House redistricting plans. The failure of the Defendants to draw additional Latino and minority opportunity districts; the Defendants use of racial gerrymandering techniques such as cracking and packing Latino and minority population to limit the number of Latino and minority opportunity districts drawn; the Defendants' use of redistricting criteria unevenly and as a pretext to limit the number of Latino opportunity districts; all work together to result in a violation of the rights of Plaintiff as secured by Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

**SECOND CLAIM FOR RELIEF – INTENTIONAL DISCRIMINATION AND
DISCRIMINATORY EFFECT**

76. The allegations contained in paragraphs 1 through 73 are alleged as if fully set forth herein.

77. The election practices and procedures used to apportion and draw Texas House districts statewide in both 2011 and 2013, and in particular to Bexar, El Paso, Nueces, Harris, Dallas, Tarrant, Midland, Ector, Bell, Lubbock, and Fort Bend Counties, was done in such a fashion and with the intent to disadvantage Latino and minority voters and resulted in a discriminatory effect on minority voters in Texas. Based on the totality of the circumstances, the political process used by the State Defendants to allocate and draw Texas House seats in Texas Counties, and Bexar, El Paso, Bell, Fort Bend, Nueces, Harris, Dallas, Tarrant, and West Texas in particular, violates the rights of Latino voters in violation of Section 2 of the Voting Rights Act as well as the Fourteenth and Fifteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

78. In addition, the Texas House districting plans adopted by the Texas House of Representatives in 2011 and 2013 have a total or top to bottom deviation of 9.9% and 9.85%

respectively. These deviations were achieved by overpopulating Latino majority districts, to avoid drawing new Latino majority districts and to gain political advantage. Therefore, the manipulation of the population deviation to 9.9% and 9.85% has a discriminatory effect on Latino voters and violates the one person one vote principle of the 14th Amendment as well as Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

THIRD CLAIM FOR RELIEF – ONE PERSON, ONE VOTE

79. The allegations contained in paragraphs 1 through 73 are alleged as if fully set forth herein.

80. The pre-2011 redistricting plans for the Texas House of Representatives and United States House of Representatives exceed permissible population variances between the least populated district and the most populated district. The implementation of such variances or deviations from ideal population by Defendants violate the rights of all voters and persons as guaranteed by the one person, one vote principle embodied within the Fourteenth Amendment of the United States Constitution and protected by 42 U.S.C. § 1983.

81. In addition, the Texas House districting plan adopted by the Texas Legislature in both 2011 and 2013 have total or top to bottom deviations of 9.9% and 9.85% respectively. These deviations were achieved by overpopulating Latino majority districts, to avoid drawing new Latino majority districts and to minimize the opportunity of Latino voters to participate in the political process. There is no legal justification for maintaining a deviation of 9.9% or 9.85% when there is such an impact on Latino voting strength. These 9.9% and 9.85% deviations violate the one person, one vote principle of the Fourteenth Amendment of the United States Constitution as protected by 42 U.S.C. § 1983.

82. With respect to the first, second, and third claims for relief, this is also an action for declaratory judgment and preliminary and permanent injunctive relief instituted pursuant to 42 U.S.C. § 1973, 42 U.S.C. § 1983, and 28 U.S.C. § 2001.

83. With respect to the first, second, and third claims for relief, Plaintiff seeks a declaration that the actions of the State Defendants in the 2013 redistricting cycle violate their rights as secured by the Voting Rights Act and the Fourteenth and Fifteenth Amendments of the United States Constitution. Plaintiff also seeks to enjoin any further use of the pre-2011, the 2011 and the 2013 plans for the Texas House and United States House of Representatives.

BASIS FOR EQUITABLE RELIEF

84. Plaintiff has no plain, adequate, or complete remedy at law to redress the wrongs alleged herein and this suit for declaratory judgment and injunctive relief is their only means of securing adequate redress from all of the Defendants' unlawful practices.

85. Plaintiff will continue to suffer irreparable injury from all of the Defendants' intentional acts, policies, and practices set forth herein unless enjoined by this Court.

PRAYER

Plaintiff respectfully prays that this Court enter Judgment granting Plaintiff:

A. A declaratory judgment that State Defendants' actions violate the rights of Plaintiff as protected by Section 2 of the Voting Rights Act, 42 U.S.C. § 1973 *et seq.* and that the actions of Defendants violate the rights of Plaintiff as protected by the Fourteenth and Fifteenth Amendments to the United States Constitution and 42 U.S.C. § 1983;

B. Preliminary and permanent injunctive relief requiring the State Defendants, their successors in office, agents, employees, attorneys, and those persons acting in concert with them and/or at their discretion to develop redistricting plans that do not dilute Latino and minority

voting strength for the Texas House of Representatives and the United States House of Representatives, and also enjoining and forbidding the use of the current Congressional and State House redistricting plans.

C. An order requiring all Defendants to comply with Section 2 and comply with the Section 5 preclearance requirements of the Voting Rights Act as provided by Section 3(c) of the Act;

E. The costs of this suit and reasonable attorneys' fees and litigation expenses, including expert witness fees and expenses, pursuant to 42 U.S.C. §§ 1973l(e) and 1988.

F. An order of this Court retaining jurisdiction over this matter until all Defendants have complied with all orders and mandates of this Court; and

G. Such other and further relief as the Court may deem just and proper.

DATED: September 17, 2013

Respectfully Submitted,

_____/s/ Jose Garza

JOSE GARZA
State Bar No. 07731950
Law Office of Jose Garza
7414 Robin Rest Dr.
San Antonio, Texas 78209
(210) 392-2856
garzpalm@aol.com

JOAQUIN G. AVILA
LAW OFFICE
P.O. Box 33687
Seattle, Washington 98133
Texas State Bar # 01456150
(206) 724-3731
(206) 398-4261 (fax)
jgavotingrights@gmail.com

Ricardo G. Cedillo
State Bar No. 04043600
Mark W. Kiehne
State Bar No. 24032627

DAVIS, CEDILLO & MENDOZA, INC.
McCombs Plaza, Suite 500
755 E. Mulberry Avenue
San Antonio, Texas 78212
Tel.: (210) 822-6666
Fax: (210) 822-1151
rcedillo@lawdcm.com
mkiehne@lawdcm.com

**ATTORNEYS FOR MEXICAN
AMERICAN LEGISLATIVE CAUCUS,
TEXAS HOUSE OF REP. (MALC)**

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of July, 2013, I electronically filed the foregoing using the CM/ECF system which will send notification of such filing to all counsel of record who have registered with this Court's ECF system, and via first class mail to those counsel who have not registered with ECF.

_____/s/ Jose Garza_____
JOSE GARZA