

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

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

**PLAINTIFF MALC’S RESPONSE IN OPPOSITION TO DEFENDANTS’ MOTION TO
MODIFY COURT’S LEGISLATIVE PRIVILEGE ORDER**

Defendants collectively have filed their motion to modify this Court’s order dated August 1, 2011 (Doc. No. 102) regarding legislative privilege. Plaintiff MALC opposes this motion and would argue that this Court has taken sufficient steps to protect the Defendants’ ability to urge, at the appropriate time, any privilege Defendants or specific legislators wish to invoke.

Specifically, this Court’s order established an appropriate process for review of the privilege to be urged. First, the Court required the deponent to appear and testify at the deposition. Second, the deponent could invoke the privilege in response to specific questions. Third, if applicable after invoking the privilege, the deponent was required to answer all questions. Fourth, the deposition testimony was to remain under seal and could be submitted to the Court for *in camera* review, along with a motion to compel, if the party taking the deposition decided to use the testimony at trial. *See* Order, at pp. 5-6 (Doc. 102).

The rationale for the process developed by the Court is as appropriate today as it was in 2011. As this Court noted: “As an evidentiary and testimonial privilege, the legislative privilege is limited and qualified. **In re Grand Jury**, 821 F. 2d. 946, 957-58 (3rd Cir. 1987).” Order, at p.

5. In fact as this Court noted: “However, the privilege does not apply to every person who may be deposed in this case, nor does it apply to every question that may be asked during deposition. The privilege is personal to each person who may be entitled to invoke it, and that person may choose to waive the privilege.” *Id.* A blanket order of protection at this point, may foreclose this Court from determining whether the privilege, based on the particular question, particular person involved and the particular information secured, should not be enforced based on circumstances not readily apparent at this point, such as whether the information is or is not available from other sources. *Id.*; *Florida Association of Rehabilitation Facilities, Inc. v. State of Florida*, 164 F.R.D. 257, 260 (N. D. Fla. 1995)(“The witnesses here have not appeared at their depositions and asserted their privilege in the context of specific questions. Accordingly, the question of the operation of a privilege in a specific setting is not ripe.”).

The Defendants argue that even those legislators who have waived the privilege should be allowed to now assert it now because we have a new plan and new process in place. See Defendants’ Motion at 2. However the Defendants have consistently argued that this cause should be tried as one seamless proceeding and this Court has resisted efforts to segregate the proceedings between the 2011 and 2013 redistricting enactments. This is, in fact, one legal action, waiver of the privilege in 2011 should follow and apply to the 2013 enactment.

The Defendants offer no valid argument as to why the Court’s reasoning in 2011 does not also apply here. As was the case in 2011, we have no specific witness, we have no specific witness invoking a privilege and we have no question and no response against which to measure the asserted privilege.

The Defendants’ Motion to Modify should be denied.

DATED: December 2, 2013

Respectfully Submitted,

/s/ Jose Garza

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of December, 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