

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-CA-360-OLG-JES-XR
STATE OF TEXAS, et al.,	§	[Lead Case]
Defendants.	§	

MEXICAN AMERICAN	§	
LEGISLATIVE CAUCUS, TEXAS	§	
HOUSE OF REPRESENTATIVES,	§	
Plaintiffs,	§	CIVIL ACTION NO.
v.	§	SA-11-CA-361-OLG-JES-XR
	§	[Consolidated Case]
STATE OF TEXAS, et al.,	§	
Defendants.	§	

TEXAS LATINO REDISTRICTING	§	
TASK FORCE, et al.,	§	
Plaintiffs,	§	CIVIL ACTION NO.
v.	§	SA-11-CA-490-OLG-JES-XR
	§	[Consolidated Case]
RICK PERRY,	§	
Defendant.	§	

MARGARITA V. QUESADA, et al.,	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO.
	§	SA-11-CA-592-OLG-JES-XR
RICK PERRY, et al.,	§	[Consolidated Case]
Defendants.	§	

EDDIE RODRIGUEZ, et al.,	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO.
	§	SA-11-CA-635-OLG-JES-XR
RICK PERRY, et al.,	§	[Consolidated Case]
Defendants.	§	

JOINT PLAINTIFFS’ RESPONSE TO DEFENDANTS’ MOTION TO MODIFY THE COURT’S LEGISLATIVE PRIVILEGE ORDER DATED AUGUST 1, 2011

The NAACP Plaintiffs, the LULAC Plaintiffs, the African-American Congressional Plaintiffs, the Rodriguez Plaintiffs, and the Quesada Plaintiffs oppose the state defendants’ Motion to Modify the Court’s Legislative Privilege Order (Doc. 930).^{*} The procedures established in the Order of August 1, 2011 (Doc. 102) (“August 1 Order”), should be kept in place, unchanged, through conclusion of this litigation.

The Court’s August 1 Order did not decide the substantive issue of legislative privilege. Rather, it found that the state defendants’ assertions of the privilege were “premature,” Order at 5, and established procedures by which concrete assertions of such a privilege are to be addressed. This approach was apparently prudent, since an actual assertion of the privilege is yet to be seen in this case. *See, e.g.*, Transcript of Sept. 9, 2011 (state defendants’ attorney informing Court that there would not be an assertion of legislative privilege since he had not received objections from state legislators).

The state defendants provide no substantive support for their attack on the procedures established in the August 1 Order as a “partial abrogation of the legislative privilege,” State Mot. at

^{*} The Quesada Plaintiffs join for the purpose of supplementing their previously-filed response in opposition to the state defendants’ motion. *See* Doc. 940.

2. Such a claim cannot be substantiated since the August 1 Order preserved full protection for the privilege, when and if it were applicable to a given situation: “the testimony will not be disclosed or used unless this Court finds that the privilege does not apply, has been waived and/or should not be enforced.” Aug. 1 Order at 6.

The procedures that have been adopted thus far serve the basic principles governing privileges in federal court. Evidentiary privileges in litigation are disfavored and have to give way in proper circumstances. *Herbert v. Lando*, 441 U.S. 153, 175(1979). Under Federal Rule of Evidence 501, application of privileges are supposed to be developed on a “case-by-case basis.” *United States v. Gillock*, 445 U.S. 360, 367 (1980). In cases such as this one, involving both the Voting Rights Act and constitutional protections against racial discrimination in the voting context, the interest in enforcement of voting rights has been found compelling, weighing “heavily in favor of disclosure” and overriding legislative or deliberative privileges. *See United States v. Irvin*, 127 F.R.D. 169, 174 (C.D. Cal. 1989).

Consistent with these principles, the August 1 Order allows the Court to evaluate any assertion of privilege in a complete, not partial, context. The substitute procedures proposed by the state defendants would eliminate much of the surrounding context from any assertion of privilege and, in that way, make the Court’s job of making a context-specific decision more difficult were a claim of privilege to ever arise.

Nor do the state defendants offer any persuasive argument about how the August 1 Order’s procedures have proven unwieldy or unworkable. They posit that the procedures “threaten[] to undermine the legislative privilege entirely” State Mot. at 7, because “[a]sserting the privilege will prove meaningless” under them, *id.* at 8. But they provide no cases supporting this argu-

ment. They merely quote broader observations that judicial inquiries into legislative motivation might intrude into other branches of government. *Id.* The August 1 Order, of course, preserves the opportunity for the Court to address that point when and if an actual situation raising the issue presents itself—which is yet to happen in the two-and-a-half years of litigation in this case.

Without identifying a single concrete example of a problem created thus far by the August 1 procedures, the state defendants would have the Court establish a new set of procedures that, if adopted, would increase the expense and time involved in litigating the case’s remaining issues. It also would nearly certainly burden the Court with additional hearings that have not been required under the current procedures. When it set the basic structure for the remainder of this case, the Court observed that, even with a July 2014 trial date, “there is much to be accomplished” and that the Court “has strived to keep this case moving at a brisk pace.” Order of Sept. 6, 2013, at 19-20 (Doc. 886). The state defendants’ proposed modification to the legislative privilege procedures that have functioned fairly and efficiently would undermine the Court’s stated objectives highlighted by these observations. This would be a special concern in light of the introduction into the case of the important new issues about intent raised under Section 3(c) of the Voting Rights Act.

The joint plaintiffs urge the Court to deny the state defendants’ motion to modify the August 1 procedures.

Respectfully submitted,

 /s/ Renea Hicks
Attorney at Law
State Bar No. 09580400
Law Office of Max Renea Hicks
101 West 6th Street
Austin, Texas 78701
(512) 480-8231 - Telephone
(512) 480-9105 - Facsimile
rhicks@renea-hicks.com

ATTORNEYS FOR PLAINTIFFS EDDIE
RODRIGUEZ, ET AL., TRAVIS COUN-
TY, AND CITY OF AUSTIN

PERKINS COIE LLP

Marc Erik Elias
Admitted Pro Hac Vice
700 Thirteenth Street N.W., Suite 600
Washington, DC 20005-3960
(202) 434-1609
(202) 654-9126 FAX
MElias@perkinscoie.com

Abha Khanna
Admitted Pro Hac Vice
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
(206) 359-8312
(206) 359-9312 FAX
AKhanna@perkinscoie.com

ATTORNEYS FOR PLAINTIFFS EDDIE
RODRIGUEZ, *ET AL.*

David Escamilla
Travis County Attorney
State Bar No. 06662300
P.O. Box 1748
Austin, Texas 78767
(512) 854-9416

fax (512) 854-4808

Attorney for Plaintiff Travis County

Karen Kennard
City Attorney
State Bar No. 11280700
P.O. Box 1088
Austin, Texas 78767-1088
(512) 974-2268
fax (512) 974-6490

Attorney for Plaintiff City of Austin

/s/ Allison J. Riggs

Anita Sue Earls
Allison Jean Riggs
SOUTHERN COALITION FOR SOCIAL
JUSTICE
1415 West Highway 54, Suite 101
Durham, NC 27707
(919) 323-3380 ext 117
Fax: (919) 323-3942

Robert Stephen Notzon
LAW OFFICE OF ROBERT S. NOTZON
1502 West Avenue
Austin, Texas 78701
(512) 474-7563
Fax: (512) 852-4788

Victor L. Goode
NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215-3297
(410) 580-5120
Fax: (410) 358-9359

COUNSEL FOR PLAINTIFF-INTERVENOR
TEXAS STATE CONFERENCE OF NAACP
BRANCHES, JUANITA WALLACE, AND AL
LAWSON

GERALD H. GOLDSTEIN
Goldstein, Goldstein and Hilley
310 S. St. Mary's Street

29th Floor Tower Life Bldg.
San Antonio, Texas 78205
Phone: (210) 852-2858
Fax: (210) 226-8367

/s/ J. Gerald Hebert
J. GERALD HEBERT
D.C. Bar #447676
Attorney at Law
191 Somerville Street, #405
Alexandria, VA 22304
Telephone: 703-628-4673
Email: hebert@voterlaw.com

PAUL M. SMITH
D.C. Bar #358870
MICHAEL B. DESANCTIS
D.C. Bar #460961
JESSICA RING AMUNSON
D.C. Bar #497223
Jenner & Block LLP
1099 New York Ave., N.W.
Washington, D.C. 20001
Tel: (202) 639-6000
Fax: (202) 639-6066

JESSE GAINES
TX Bar No. 07570800
PO Box 50093
Ft Worth, TX 76105
(817) 714-9988

Counsel for the Quesada Plaintiffs

/s/ Luis R. Vera, Jr.
LUIS ROBERTO VERA, JR.
LULAC National General Counsel
Law Offices of Luis Roberto Vera, Jr.
& Associates
1325 Riverview Towers 111 Soledad
San Antonio, TX78205
(210) 225-3300
lrqlaw@sbcglobal.net

