

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]

DEFENDANTS' SUPPLEMENTAL BRIEF REGARDING
HARRIS V. ARIZONA INDEPENDENT REDISTRICTING COMMISSION

The Supreme Court's opinion in *Harris v. Arizona Independent Redistricting Commission*, 136 S. Ct. 1301 (2016), does not make any change to the law governing one-person, one-vote claims under the Fourteenth Amendment, but it underscores the strong presumption of constitutionality for plans with a total deviation below 10%, and it confirms the limited significance of the Court's summary affirmance of *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga.), *aff'd*, 542 U.S. 947 (2004) (mem.).

Harris involved a one-person, one-vote claim against the plan for state legislative districts enacted by the Arizona Independent Redistricting Commission (the "Commission") in 2012. Arizona law provides for thirty legislative districts, each electing two representatives and one senator. *Harris v. Ariz. Indep. Redistricting Comm'n*, 993 F. Supp. 2d 1042, 1049 (D. Ariz. 2014) (citing Ariz. Const. art. IV, pt. 2, §1). The

plan at issue in *Harris* thus created electoral districts for both the state house and the state senate.

The plaintiffs maintained that the plan violated the Fourteenth Amendment, despite a total population deviation of 8.8%, 136 S. Ct. at 1309, because the Commission systematically underpopulated Democratic-leaning districts and systematically overpopulated Republican-leaning districts. There was no question that it did. Except for one district that was 0.3% above the ideal population, the Commission underpopulated every district that elected only Democrats. 993 F. Supp. 2d at 1049.¹ And except for one district that was 0.6% below the ideal population, the Commission overpopulated every district that elected only Republicans. *Id.*

The Supreme Court accepted the district court's conclusion that the deviations "predominantly reflected" efforts to comply with Section 5 of the Voting Rights Act, 136 S. Ct. at 1307, but it acknowledged that "partisanship played some role," *id.* at 1309. For example, the Commission altered the boundaries of one Republican-leaning district to make it "politically more competitive," even though it concluded that the district "was not a true ability-to-elect district," and even though the Republican-appointed commissioners objected to the change. *Id.* (noting Republicans' argument that "that the Commission should either favor political competitiveness throughout the State or not

¹ The district court's opinion stated, "Of the 11 districts that elected only Democrats to the state legislature, 2 were above the ideal population and 11 were below." 993 F. Supp. 2d at 1050. But the chart provided by the district court indicated that of the districts electing three Democrats, only one exceeded the ideal district population. *See id.* at 1049.

at all”). The Court, however, focused on the plan as a whole and concluded that the plaintiffs failed to show “that illegitimate considerations were the predominant motivation behind the plan’s deviations from mathematically equal district populations.” *Id.*

The Supreme Court thus rejected the plaintiffs’ one-person, one-vote claim despite the systematic overpopulation of Republican districts and underpopulation of Democratic districts, and despite the apparent predomination of partisanship in a single district. *See id.* Notably, the Court distinguished *Larios* as a case in which the district court found “many examples” of districts and population deviations that could not be explained by any legitimate purpose. *Id.* at 1310 (citing *Larios*, 542 U.S. at 949 (Stevens, J., concurring)). *Harris* therefore implies that a statewide pattern of unequal population deviations is necessary, but not sufficient, to succeed on a one-person, one-vote claim against a plan with a total deviation below 10%. As a result, the Court explained, “attacks on deviations under 10% will succeed only rarely, in unusual cases.” 136 S. Ct. at 1307.

In sum, the Supreme Court’s opinion in *Harris* supports the Defendants’ interpretation of the one-person, one-vote doctrine and confirms that the Plaintiffs have failed to prove that Plan H283 violates the Fourteenth Amendment.

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Respectfully submitted.

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