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SUPREME COURT OF TEXAS
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No. 22-0008

IN THE SUPREME COURT OF TEXAS

GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS, AND JOHN SCOTT, SECRETARY OF STATE OF THE STATE OF TEXAS, IN THEIR OFFICIAL CAPACITIES; AND THE STATE OF TEXAS

Appellants

v.

MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES; ROLAND GUTIERREZ; SARAH ECKHARDT; RUBEN CORTEZ, JR.; TEJANO DEMOCRATS

Appellees

ON DIRECT APPEAL
FROM THE SPECIAL THREE-JUDGE DISTRICT COURT
FOR THE 126TH AND 250TH JUDICIAL DISTRICT COURTS, TRAVIS COUNTY

BRIEF ON THE MERITS OF APPELLEE MEXICAN AMERICAN LEGISLATIVE CAUCUS

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Statement of the Case

Nature of the Case:	Suit under the Uniform Declaratory Judgments Act to invalidate redistricting maps for the Texas House of Representatives because they violate Article III, § 26 of the Texas Constitution.
Trial Court:	Special three-judge district court appointed under §22A.002 of the Texas Government Code; Judge Karin Crump, Judge Emily Miskel and Justice Ken Wise.
Parties in the Trial Court:	Plaintiffs: Mexican American Legislative Caucus, Roland Gutierrez, Sarah Eckhardt, Ruben Cortez, Jr., and the Tejano Democrats. Defendants: Governor Greg Abbott and Secretary of State John Scott, in their official capacities; the State of Texas.
Trial Court's Disposition:	Granted Defendants' plea to the jurisdiction in part as to Gutierrez Plaintiffs, dismissing their request for injunction under UDJA; denied Defendants' plea to the jurisdiction in all other respects; denied Plaintiff's request for temporary injunction.

Issues Presented

1. The Texas House of Representative electoral map, H2316, is the only current legal map to be used to elect members of the state house of representatives. The map was used for the primary elections on March 1, 2022 and will, be used for the current general election in November 2022. Is Plaintiffs' challenge to map H2316 moot merely because the map has been used in the now-completed March 1st primary election or is it still subject to challenge as violating the Texas Constitution because it is the only legal map authorized for conducting elections for the Texas House of Representatives?

2. Does the Mexican American Legislative Caucus have standing to challenge electoral maps that impact its members as sitting representatives, residents, and voters in the counties that will experience representational and vote dilution in contravention of Article III, § 26 of the Texas Constitution?

SUMMARY OF ARGUMENT

The Texas Legislature reapportioned districts for members of the Texas House of Representatives in House Bill 1 ("HB 1"), which adopted map H2316. HB 1 is unconstitutional because it violates the "whole county line rule" found in Article III, Section 26 of the Texas Constitution. As proscribed in the Constitution, the Legislature must draw at least two districts wholly within the boundaries of Cameron County. Any surplus or remainder population not within one of those wholly-contained districts may be allocated to one additional district that goes into an adjacent county. Map H2316 in HB 1, however, only provides Cameron County with one whole district and impermissibly splits population into two different directions across two different county lines.

Specifically, the Texas Legislature reconfigured House District 37 so that it contains population in both Willacy County to the north and Cameron County. House District 35 was reconfigured so that its population is located in both Hidalgo County and Cameron County. Despite the constitutional requirement to have at least two whole Cameron County districts, only House District 38 is fully contained within the borders of Cameron County. This is a patent constitutional violation and one that is redressable in court now.

First, Plaintiffs' challenges to HB 1 and map H2316 are not moot simply because the Plaintiffs have heeded this Court's recent opinions regarding temporary

injunctions in election cases just before the actual election date. Simply because the primary election occurred does not deprive the trial court from power to entertain and grant a declaration about the constitutionality of HB 1 and the proper interpretation of the "whole county line rule" that will impact the next election. If the State's invitation to declare a challenge is moot is accepted, it would undermine the plain language of the Uniform Declaratory Judgment Act and be the literal death knell to any future judicial review of legislative actions regarding free and fair elections.

Second, the Mexican American Legislative Caucus ("MALC") has standing to seek a declaration that HB 1 is unconstitutional. MALC has identified individual members with standing because their individual members represent districts, and hence reside, within Cameron County that are directly impacted. For instance, MALC identified Representative Alex Dominguez from House District 37 about the representational dilution that would occur for Cameron County if this map was permissible. Representative Dominguez also testified that he is a Cameron County voter as well as a member of MALC. The record is also undisputed that an essential purpose of MALC is to enhance Latino participation and protect Latino representational interests and to ensure that only constitutional legislation is passed by the Texas Legislature. The evidence also fully supports the germaneness of this suit to MALC's mission and the purpose of its members to stand up against

legislation that is both unconstitutional and dilutive in effect for Latino representation. Indeed, there was no controverting evidence on any of these points.

Third, and finally, there is no sovereign immunity defense to the claims as MALC has pleaded the case. MALC has clearly and unequivocally alleged that HB 1 violates the Texas Constitution and, as a result, pleads a proper challenge to the constitutionality of a state statute under the Uniform Declaratory Judgment Act ("UDJA"). MALC has alleged the claim as against Governor Greg Abbott and the Secretary of State John Scott, in their official capacities, which is a claim against the governmental entities that are tasked with holding and conducting the state elections and are the proper parties to this suit. Defendants' last-ditch argument about sovereign immunity not being waived because the claim is "facially invalid" is simply wrong. Plaintiffs' claims that HB 1 violates the "whole county line rule" are factually and legally correct and the maps, ultimately, must be redrawn.

ARGUMENT

1. MALC does not seek an advisory opinion because there is still a live controversy between the parties.

Defendants argue that, since Plaintiffs no longer seek expedited temporary relief in time for the 2022 election, the controversy at issue is no longer live. Def. Brief at 17. First, Defendants misconstrue the nature of declaratory actions. They confuse the request for injunctive relief that accompanies the underlying declaratory action with the action itself. Second, their argument impermissibly relies on ungrounded

speculation about the action of future Legislatures, ignoring the actual state of the law as it stands.

Although MALC has abandoned its request for temporary injunctive relief ahead of the 2022 primary election in light of this Court's ruling in *In re Khanoyan*, __ S.W.3d__, No. 21-1111, 2022 WL 58537 (Tex. Jan. 6, 2022), and other election law cases, this does nothing to change the live declaratory judgment action at the heart of MALC's Petition. The UDJA states, "[a] court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Tex. Civ. Prac. & Rem. Code Ann. § 37.003. Rather than being simply advisory, a ruling by the court as to the constitutionality of the Texas House of Representatives electoral map is unconstitutional would be a determination of legal statuses, rights, and relations. It is a quintessential issue ripe for declaratory judgment. Whether the injunctive relief that would accompany the court's declaration (the "further relief" described in the statute) might be barred during the 2022 primary election due to the *Purcell* doctrine is a completely separate question which does not bear on the validity of this UDJA action.

Additionally, Plan H2316, as enacted by HB 1 is the only map legally in force, and Defendants' argument that the map might change during the 2023 Legislative session is pure speculation. HB 1 has no expiration date. It will continue in force

until superseded or declared unconstitutional by a court of law. While the parties agree that the Legislature has a constitutional responsibility to redistrict in a regular session, *see* Def. Brief at 17, the fact of the matter is that the Legislature has frequently foregone that responsibility in previous decades. In the 2000, 1980, and 1970 redistricting cycles, for example, the Legislature failed to pass one or more constitutionally required maps and ultimately courts ended up engaging in the redistricting process. *See* Texas Legislative Council, *Redistricting History*, https://redistricting.capitol.texas.gov/history (last accessed Mar. 1, 2022).

As a practical matter, if one wanted to engage in speculation – which is inappropriate – the more likely scenario is that the Legislature may simply re-adopt Plan H2316 with unchanged boundaries as a formality during the 88th Legislature. Besides being legally warranted under the UDJA, a determination that the current boundaries violate the constitutional county line rule would guide the legislature in adopting new, constitutional boundaries during its next regular session rather than sending the maps to the judiciary to be redrawn. Regardless, speculating about what course of action the Legislature might take at some point in the future is unwarranted because MALC has a legal right to pursue a declaratory action against the only maps that are legally in force.

Finally, if the Defendants' mootness position was correct, then there would be no meaningful judicial review of redistricting maps if those maps go into force

just before an election – whether a primary or general. Defendants' position is essentially that a party cannot challenge the maps before an election because the courts cannot interfere with the electoral process once started and the courts cannot redress constitutional infirmities in the maps once an election has occurred because the issues are now moot. This cannot and should not be the law and the Court should make clear that a party may seek redress for a deprivation of the fundamental right to vote in the courts.

2. MALC has associational standing.

Defendants attack MALC's associational standing on three grounds. Def. Br. at 28-34. First, Defendants erroneously assert that MALC cannot establish that it has any identifiable member with standing to sue. *Id.* at 29-30. Second, they assert that MALC has failed to sufficiently plead a cognizable injury to any member. *Id.* at 31-32. Lastly, Defendants inaccurately claim that this lawsuit is not germane to MALC's organizational purpose. *Id.* at 33-34.

A. MALC has met its burden to identify individual members with standing.

As stated above, Defendants fault MALC for not explicitly naming at least one individual member that has "suffered the requisite harm." Def. Brief at 29. However, MALC clearly identified that the individual House Representatives representing Cameron County, who would have individual standing, are MALC members. *See* MALC.CR 407 (noting that "The Texas House Representatives who

represent the areas challenged in this Petition are members of MALC.").

This case is not like *Summers*, where Plaintiffs were relying on the probability that some unidentified member was likely to use a public facility at some point. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009) ("The dissent proposes a hitherto unheard-of test for organizational standing: whether, accepting the organization's self-description of the activities of its members, there is a statistical probability that some of those members are threatened with concrete injury."). The Representatives for the existing Cameron County districts are concrete individual public officials. This is sufficient to meet the burden that "requires plaintiff-organizations to make specific allegations establishing that at least one identified member had suffered or would suffer harm." *Id*. at 498.

Defendants seem to take great issue with the fact that there is not a list of names of all MALC members residing in the affected districts in the Petition. Def. Brief at 30. However, by virtue of identifying the districts that each of the affected MALC members represent, MALC has clearly identified which of its members "suffered the requisite harm." *Summers,* 555 U.S. at 499. To the extent that Defendants fault MALC for identifying individual House Representatives by the area they represent but not writing out their name in the Petition, this is not a legal deficiency sufficient to justify granting a jurisdictional plea. This is particularly so when Representative Alex Dominguez has already testified and presented evidence

sufficient for the district court that he is, indeed, directly injured as a result of HB 1.

B. Identifiable MALC members face cognizable, concrete, and imminent injury should the unconstitutional maps be used for an election.

Defendants next attack MALC on the basis that the State's violation of the Article III, section 26 county-line rule is not a cognizable, concrete, or imminent injury, but rather "logically incoherent." Def. Brief at 31. This assertion, however, is a continued misrepresentation of the injury alleged by MALC. Namely, Defendants continue to characterize MALC's injuries as only vote dilution or legislative standing. While vote dilution certainly plays a role in MALC's injuries and in the germaneness to MALC as an organization, it is not the primary issue at stake. Rather, the true issue is the constitutional right of Cameron County residents to have two whole seats and one partial seat in the Texas House of Representatives.

First and foremost, MALC members who are residents of Cameron County suffer a concrete deprivation of their constitutional right. The Texas Constitution states that, "when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county . . . ." TEX. CONST. Art. III, § 26. Despite Defendants best efforts to downplay their constitutional violation by stating that Cameron County voters will still "fully control" two districts, that is not what the plain language of the Texas Constitution states. "Shall be apportioned to such county"

does not mean the Representative may be apportioned elsewhere so long as 51 percent of the voting population for the district is from the subject county. As such, due to Cameron County having only one whole state representative and two partial representatives under the approved redistricting plan, the constitutional right of Cameron County residents to two undivided, whole state representatives has been deprived.

While Defendants are certainly correct in that Representatives represent the people, this does not make the plain language of "shall be apportioned to *such county*" superfluous. *See* TEX. CONST. Art. III, § 26; Def. Brief at 32. Counties are the fundamental political building block of this state, and the framers of the Texas Constitution chose to protect the right of individual Texans to local representation. Deprivations of constitutional rights are always concrete, irreparable injuries. *See, e.g.*, *Iranian Muslim Org. v. City of San Antonio*, 615 S.W.2d 202, 208 (Tex. 1981) (holding that "A court has no discretion to deny relief by a temporary injunction where a violation of a constitutional right is clearly established.") (quoting *Southwestern Newspapers Corp. v. Curtis*, 584 S.W.2d 362, 365, (Tex. App.—Amarillo 1979, no writ); *see also Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012) (citing 11A Federal Practice and Procedure § 2948.1 (2d ed. 1995)) ("[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further

showing of irreparable injury is necessary."). The type of numerical vote dilution analysis Defendants suggest is entirely inappropriate for determining whether an irreparable constitutional injury exists. When a person's right to free speech has been infringed, for instance, courts do not attempt to measure the practical value of the person's speech in determining whether they have suffered an injury.

Though wholly unacknowledged by Defendants, MALC also pleads a representational dilution injury; a claim that is distinct from vote dilution. The representational dilution claim is simply a practical way of considering the constitutionally protected right described above. The county line rule is not just arbitrary esoterica — the rule recognizes that counties are real-life communities of interest. The residents of Texas counties have their practical interests served better when their political representation is unified, rather than split apart. By unnecessarily splitting apart Cameron County, and further splitting apart distinct communities within the County, HB 1 dilutes the representational power of Cameron residents, including the MALC members who are residents thereof.

The trial court heard, and presumably credited by denying Defendants' Plea to the Jurisdiction, extensive evidence regarding the practical import of the county line rule. The enacted House Plan, which unlawfully deprives Cameron County of two whole representative seats, would now place important communities such as

San Benito in a district anchored in Western Hidalgo County. 2RR.92-93. The largest employers in South Texas are the school systems and local governments, including the County and its municipalities. *Id.* at 94. Having two whole representative seats in the legislature has allowed these bodies to "ensure that they receive the resources that they need," and they "rely" on those two state representatives. *Id.* Splitting apart a now wholly contained seat would diffuse the attention of that state representative. For example, the Representative for HD 37 would now not only represent the Port of Brownsville, an important economic engine for Cameron County, they would now have to also represent the competing Willacy County port of entry. *Id.* at 97, 100. Having these interests split affects, inter alia, how the state representative might advocate for tax rates at the legislature. *Id.* at 102.

Further, the demographics of Willacy County "are not congruent with the demographics of Cameron County," and Willacy County communities have different interests *See id.* at 103-05; RR3.77. There is a reason that the framers of the Texas Constitution chose to base representation on county lines, and that the Texas Legislature and the sovereign people of Texas have chosen to keep the county line rule in place since the State's founding. Residents and voters of counties who are not apportioned their constitutional share of representation suffer a concrete and particularized injury sufficient to confer standing.

C. Challenging this unconstitutional redistricting map is germane to MALC's purpose.

a. Unconstitutionally breaking the Cameron County line twice will necessarily dilute Latino voting strength in at least two Texas House districts and is therefore germane to MALC's organizational purpose.

Defendants next inaccurately state that "MALC's county-line-rule claim does not seek to vindicate the interests of a particular race, ethnicity, or other protected class…" Def. Brief at 33. However, a primary concern for MALC, which is germane to its raison d'etre, is that breaking the Cameron County line twice will necessarily dilute the Latino population in at least two Texas house districts. This results because Cameron County is more heavily Latino than its neighboring counties, but its neighboring counties are more Latino than their neighboring districts. For example, Willacy County, which currently sits in HD 31, is more Latino than the rest of HD 31. RR4.16. But Willacy is less Latino than HD 37 or the rest of Cameron County. *Id* at 16-17; *see also* RR2.103-07. Therefore, by removing Willacy County from HD 31 and adding it to HD 37, it reduces the percentage Latino population in both HD 31 and HD 37 and makes it less likely that the candidate of choice for the majority of Latino voters in those districts will be elected. *Id.* Because MALC has a stated interest in "maintaining and expanding Latino representation across elected offices in Texas," counteracting the reduction in Latino concentration across multiple districts is directly germane to MALC's

purpose. MALC.CR.407.

b. MALC, as a legislative caucus whose members are elected Texas House Representatives, has an interest in preserving and protecting the Texas Constitution.

Secondly, every MALC member is a Texas House Representative. MALC CR.406-07. A purpose of MALC is to serve its members and their staff. *Id.* The members of the Caucus take a constitutional oath to uphold the Texas Constitution. MALC members take that duty seriously and are dedicated, in their capacity as members, to opposing unconstitutional legislation through all means necessary. This connection has nothing to do with injuries for standing purposes, but it does make the suit at hand germane to MALC's purpose. Further, as Defendants recognize, if the Legislature attempts to re-adopt Plan H2316 as a formality during the 88th Legislature, MALC members will again be faced with the question of whether the configuration of districts in South Texas violates the county line rule.

3. The Governor of Texas and the Texas Secretary of State are government entities not shielded from constitutional challenges under the Uniform Declaratory Judgment Act.

Defendants do not contest that the UDJA waives sovereign immunity for a challenge to a statute's constitutionality, and indeed cite authority which stands for the well-established principle that it does. *See* Def. Brief at 38-39 (citing *Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 76 (Tex. 2015). *Patel* re-affirmed that sovereign immunity is inapplicable when a suit challenges the

constitutionality of a statute and seeks only equitable relief. See *id*. at 75–76 (Tex. 2015) ("The State acknowledges this Court's decisions to effect that sovereign immunity is inapplicable when a suit challenges the constitutionality of a statute and seeks only equitable relief.").

Instead, Defendants assert that the Governor of Texas and the Texas Secretary of State are not governmental entities. Def. Brief at 40. This fails to understand that suing the Texas Governor and Texas Secretary of State in their official capacity is the same as suing the government entities that are the Governor and Secretary of State.

In general, "[i]t is fundamental that a suit against a state official is merely 'another way of pleading an action against the entity of which [the official] is an agent.'" *See Texas A & M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 844 (Tex. 2007) (quoting *Kentucky v. Graham*, 473 U.S. 159, 165 (1985)). But, even if under some circumstances there would be a superficial distinction between naming a government officer and a government entity, that distinction does not apply to individualized governmental entities such as the Governor of Texas and the Texas Secretary of State. For example, there is at least a superficial distinction between naming the Texas Department of Motor Vehicles and naming Monique Johnston, Director of the Department of Motor Vehicles, in her official capacity. But that distinction does not apply in a case where the governmental entity at issue is an individual office.

The governmental entity that is the Governor of Texas is literally "GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS, in his official capacity," and the same applies to the Texas Secretary of State. There would be no other way to plead the case and make the Governor of Texas and the Texas Secretary of State parties to this case. It is the Governor and Secretary of State qua individual governmental entities that bear the statutory responsibilities associated with ordering and conducting elections, not their office staff. Hence, the Election Code reads "The *governor* shall order: each general election for officers of the state government," not "the governor's office shall order . . . ." *Id.* at § 3.003(a)(1) (emphasis added). Thus, notable cases challenging the constitutionality of redistricting statutes are typically styled as actions against the named Governor and Secretary of State. *See, e.g.*, *Clements v. Valles*, 620 S.W.2d 112 (Tex. 1981); *Smith v. Craddick*, 471 S.W.2d 375 (Tex. 1971); *Richards v. Mena*, 820 S.W.2d 371 (Tex. 1991) (also worth noting that several of these cases featured state legislators as plaintiffs).

4. MALC asserts a viable challenge to the constitutionality of a statute under the UDJA and is almost certain to prevail on the merits as the configuration of districts in Cameron County breaks the county line rule.

In one last unmeritorious attempt to avoid MALC's claims, Defendants assert that the UDJA's waiver of sovereign immunity does not apply here because MALC's claims are "facially invalid." Def. Brief at 41. This argument is simply a premature challenge to the merits of MALC's claims under the guise of sovereign immunity,

but nevertheless it fails.

A. At this stage, the pleadings, rather than the substantive merits of the claims, are relevant for the purposes of waiving sovereign immunity under the UDJA.

First, the Defendants over-emphasize the level of proof required to establish a "viable" claim for purposes of the UDJA. *See* Def. Brief at 40-41. In fact, this Court has stated that "claims against state officials—like all claims—must be properly pleaded in order to be maintained, not that such claims must be viable on their merits to negate immunity." *Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 77 (Tex. 2015). Defendants ignore this and launch into a full discussion of the merits of MALC's claims at this early stage. The only relevant inquiry is whether Plaintiff has properly plead its claims to implicate the immunity waiver under the UDJA, which Defendant never mention despite MALC having done so repeatedly. *See* MALCCR.408 ("This Court's jurisdiction to enter declaratory relief is established by Texas Civil Practice and Remedies Code Section 37.001, *et seq* (the 'UDJA'). Plaintiff seeks declaratory relief that a statute, HB 1, is unconstitutional, and the doctrine of sovereign immunity is inapplicable to a suit challenging the constitutionality of a statute and seeking only equitable relief."); *id.* at 414 ("Because Defendants are sued in their official capacities, the executive departments and agencies responsible for the ordering and administration of elections in the State of Texas are parties to the suit. Immunity is expressly waived under the terms of the

UDJA. HB 1 on its face violates Article III, § 26 of the Texas Constitution, the county line rule, by splitting Cameron County's surplus population into two different districts going two separate directions into two different counties."); *id.* at 416 ("Plaintiff respectfully prays for the following relief: Declaratory relief stating that HB 1 violates Article III, § 26 of the Texas Constitution.").

B. HB 1 clearly violates the plain language of the Texas Constitution's county line rule.

Even if this Court does wish to engage in a full discussion of the merits at this stage, MALC is almost certain to prevail on the merits because the configuration of districts in Cameron County plainly and clearly violates the Article III, section 26 county-line rule. The first relevant section of the county line rule reads:

> The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the House is composed; provided, that. . . when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county . . . .

TEX. CONST. Art. III, § 26.

The operation described is straightforward: the Legislature takes the total population of the state and divides it by the number of members of the House of Representatives. This provides an ideal district size. Then, for counties that have

populations greater than the ideal district size, they get the number of Representatives that is obtained by dividing their population by the ideal district population. For example, if the ideal district size is 100,000, and a county has a population of 1,000,000, it gets 10 Representatives — the phrase "apportioned among the several counties, according to the number of population in each" can have no other meaning.

Incredibly, Defendants argue that the phrase "when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county" means that if a county is big enough for more than one representative, the county line rule is satisfied so long as the county gets at least one representative. Def. Brief at 48 ("It is undisputed here that Cameron County has "sufficient" population to be entitled to one or more Representatives" and that HB 1 in fact apportioned one House District—H.D. 38—entirely to Cameron County."). Under this reading, a county which has sufficient population to entitle it to 20 Representatives would have no grievance if it only received 1 whole Representative seat because it got a "Representative or Representatives." Defendants completely ignore the relationship between the phrases "entitled" and "such," and ignores the apportionment "according to the number of population in each" language at the beginning of the Section. The language can logically be read no other way than to

mean that when a county has enough population for more than one representative, it is entitled to the number of representatives that is obtained by dividing the county's population by the ideal district size.

As if the plain language of the text were not sufficiently clear, Defendants ignore binding precedent. In restating the provisions of the county line in light of the federal one person one vote principle, the Texas Supreme Court wrote, "[i]t is still required that a county receive the member or members to which that county's own population is entitled when the ideal district population is substantially equalled [sic] or is exceeded." *Craddick*, 471 S.W.2d 375, 378. The next decade, the Legislature tested this mandate. Exactly analogously to Cameron County this decade, after the 1980 Census, Nueces County had sufficient population for over two whole representative districts. Instead of giving Nueces two whole representatives and splitting the surplus population into a third district which broke the county line, the Legislature only gave Nueces one whole district and two partial ones which each broke the county line. The Supreme Court found that this violated the county line rule, along with other violations in the map, and invalidated the reapportionment plan. See *Clements v. Valles*, 620 S.W.2d 112, 115 (Tex. 1981) (holding that "[f]inally, the failure of the plan in House Bill 960 to allot two representative districts to Nueces County is not justified . . . .").

Defendants assert that these cases are factually distinguishable because there

was more than one county line rule violation at issue in each of them. Def. Brief at 50-51. However, the plain language of the Texas Constitution contains no "freebie clause" — Defendants point to no language that says it is alright to violate Article 26 so long as you only do it once. And further, when looking at the trial court's Findings of Fact and Conclusions of Law, it is imminently clear that each of the cited violations was held to be a constitutional violation in and of itself. *See* RR2.49-50 ("Conclusion of Law No. 8, the manner in which HB 960 District in Nueces County violated Article 3, Section 26 of the Texas Constitution.").

Lastly, Defendants distort the meaning of the county line rule's final phrase. They claim that the words "may" and "any" in the phrase "for any surplus of population it may be joined in a Representative District with any other contiguous county or counties," gives the legislature discretion to draw a surplus population into an unlimited number of districts with adjoining counties. Def. Brief at 49. A surplus occurs when a county has some remainder of population that is too large to be squeezed into an existing wholly contained district but too small to form an additional wholly contained district while still falling within an allowable population deviation — for instance when a county's population entitles it to 2.5 districts. Defendants ignore that the operative phrase is "*a* Representative District," speaking in the singular. This is no oversight, as the Constitution in the immediately preceding clause says Representative or

Representatives to indicate when a plural number of districts is possible. Again, Defendants also ignore that the Texas Supreme Court has disapproved of the splitting of surplus populations into more than one district. *See Clements*, 620 S.W.2d at 114 (highlighting that "[i]n addition, three counties, Nueces, Denton and Brazoria, which are entitled to one or more representatives, are cut so that their surplus populations are joined to two, rather, than one adjoining district."). To abrogate *Smith* and *Clements* would fly in the face of the plain language of the Texas Constitution, and the three judges on the trial court panel correctly decided to dismiss Defendants' unprecedented sovereign immunity argument.

Conclusion

Ultimately, Defendants make strained and unmeritorious jurisdictional arguments to avoid dealing with the reality that HB 1 inarguably violates the Texas Constitution's county line rule. Sovereign immunity cannot shield the Texas Governor nor the Texas Secretary of State from a challenge under the UDJA alleging the unconstitutionality of HB 1. MALC, a traditional member organization, has members who will have their constitutional right to local representation deprived if HB 1 stands unchallenged. And HB 1 dilutes Latino strength in multiple House Districts and contravenes the Texas Constitution, making this challenge germane to MALC's purpose. In light of these reasons, and after an extensive evidentiary hearing, the three-judge trial court correctly

denied Defendants' Plea to the Jurisdiction.

Dated: March 2, 2022.

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

Based on a word count run in Microsoft Word, this brief contains 5,107 words, excluding the portions of the brief exempt from the word count under Texas rule of Appellate Procedure 9.4(i)(1).

/s/ Sean J. McCaffity

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was served on all counsel of record in this case in accordance with Texas Rule of Civil Procedure 21a via e-mail and electronic filing/services on March 2, 2022.

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Amy Warr	795708	awarr@adjtlaw.com	3/2/2022 4:40:25 PM	SENT

Associated Case Party: Ruben Cortez

Name	BarNumber	Email	TimestampSubmitted	Status
Martin Golando	24059153	martin.golando@gmail.com	3/2/2022 4:40:25 PM	SENT
Amy Warr	795708	awarr@adjtlaw.com	3/2/2022 4:40:25 PM	SENT
Wallace Jefferson	19	wjefferson@adjtlaw.com	3/2/2022 4:40:25 PM	SENT

Associated Case Party: The Tejano Democrats

Name	BarNumber	Email	TimestampSubmitted	Status
Martin Golando	24059153	martin.golando@gmail.com	3/2/2022 4:40:25 PM	SENT
Wallace Jefferson	19	wjefferson@adjtlaw.com	3/2/2022 4:40:25 PM	SENT
Amy Warr	795708	awarr@adjtlaw.com	3/2/2022 4:40:25 PM	SENT

Associated Case Party: Sarah Eckhardt

Name	BarNumber	Email	TimestampSubmitted	Status
Martin Golando	24059153	martin.golando@gmail.com	3/2/2022 4:40:25 PM	SENT
Amy Warr	795708	awarr@adjtlaw.com	3/2/2022 4:40:25 PM	SENT
Wallace Jefferson	19	wjefferson@adjtlaw.com	3/2/2022 4:40:25 PM	SENT

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Nicole Pioli on behalf of Sean Joseph McCaffity
Bar No. 24013122
npioli@textrial.com
Envelope ID: 62241671
Status as of 3/2/2022 4:53 PM CST

Associated Case Party: Mexican American Legislative Caucus, Texas House of Representatives

Name	BarNumber	Email	TimestampSubmitted	Status
Sean Joseph McCaffity	24013122	smccaffity@textrial.com	3/2/2022 4:40:25 PM	SENT
George Quesada	16427750	quesada@textrial.com	3/2/2022 4:40:25 PM	SENT
Nicole Pioli		npioli@textrial.com	3/2/2022 4:40:25 PM	SENT

Associated Case Party: The State of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Judd Stone	24076720	judd.stone@oag.texas.gov	3/2/2022 4:40:25 PM	SENT
Patrick Sweeten	798537	Patrick.Sweeten@oag.texas.gov	3/2/2022 4:40:25 PM	SENT
Lanora Pettit	24115221	lanora.pettit@oag.texas.gov	3/2/2022 4:40:25 PM	SENT
Eric Hamilton	24127287	Eric.hamilton@oag.Texas.gov	3/2/2022 4:40:25 PM	SENT
William Thompson	24088531	will.thompson@oag.texas.gov	3/2/2022 4:40:25 PM	SENT
Jack DiSorbo		jack.disorbo@oag.texas.gov	3/2/2022 4:40:25 PM	SENT

Associated Case Party: Greg Abbott

Name	BarNumber	Email	TimestampSubmitted	Status
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Patrick Sweeten	798537	Patrick.Sweeten@oag.texas.gov	3/2/2022 4:40:25 PM	SENT
Judd Stone	24076720	judd.stone@oag.texas.gov	3/2/2022 4:40:25 PM	SENT
Jack DiSorbo		jack.disorbo@oag.texas.gov	3/2/2022 4:40:25 PM	SENT
William Thompson	24088531	will.thompson@oag.texas.gov	3/2/2022 4:40:25 PM	SENT

Associated Case Party: John Scott

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Associated Case Party: John Scott

Name	BarNumber	Email	TimestampSubmitted	Status
Judd Stone	24076720	judd.stone@oag.texas.gov	3/2/2022 4:40:25 PM	SENT
Patrick Sweeten	798537	Patrick.Sweeten@oag.texas.gov	3/2/2022 4:40:25 PM	SENT
Lanora Pettit	24115221	lanora.pettit@oag.texas.gov	3/2/2022 4:40:25 PM	SENT
Eric Hamilton	24127287	Eric.hamilton@oag.Texas.gov	3/2/2022 4:40:25 PM	SENT
William Thompson	24088531	will.thompson@oag.texas.gov	3/2/2022 4:40:25 PM	SENT
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