

**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' ADVISORY REGARDING HD90**

Defendants the State of Texas, Greg Abbott, in his official capacity as Governor, and Rolando B. Pablos, in his official capacity as Secretary of State, file this Advisory in response to the Court's Order of July 3, 2017, ECF No. 1586.

The Court's Order directed the parties to advise the Court whether there is agreement on what remedy, if any, should be ordered for HD90 and adjoining districts and if not, what the nature of the disagreement is. The parties have not reached an agreement on the threshold question of whether a remedy should be ordered for HD90 at all. Similarly, the parties have reached no agreement regarding the geographic areas that should be addressed in the event the Court were to require a remedy.

The Supreme Court affirmed this Court's finding that HD90 amounted to a racial gerrymander because the State failed to carry its burden to prove that consideration of racial data to maintain a 50% SSVR majority was narrowly tailored to achieve a

compelling governmental interest. *See Abbott v. Perez*, 138 S. Ct. 2305, 2335 (2018); *Perez v. Abbott*, 267 F. Supp. 3d 750, 794 (W.D. Tex. 2017). The Supreme Court made clear that a legislative group’s request to bring the Latino population back over 50% was insufficient to carry that burden. *Abbott v. Perez*, 138 S. Ct. at 2335. Instead, the Supreme Court explained, a State must make “a strong showing of a pre-enactment analysis with justifiable conclusions.” *Id.* Specifically, the use of race must be supported by election analysis; that analysis must have been considered by the Legislature; and that analysis must indicate that the failure to consider racial data could lead to liability for vote dilution under § 2 of the Voting Rights Act. *Id.* at 2334-35. Because the State failed to carry that burden here, the Supreme Court remanded for this Court “to consider what if any remedy is appropriate at this time.” *Id.* at 2335.

Defendants respectfully submit that no remedy is necessary in HD90. First, there is no question that the current district provides Hispanic voters with the opportunity to elect their candidate of choice. Representative Ramon Romero has been elected to represent HD90 twice, in 2014 and 2016, and he does not face a challenger in the 2018 election.<sup>1</sup> Second, there is no evidence of discriminatory intent: “The Legislature adopted changes to HD90 at the behest of *minority groups*, not out of a desire to discriminate.” *Abbott v. Perez*, 138 S. Ct. at 2329 n.24. Finally, a redrawn HD90 would

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<sup>1</sup> *See, e.g.*, <https://apps.texastribune.org/elections/2018/primary-election-results/> (indicating no Republican primary candidates in HD90).

be in effect only in 2020. Given the proven ability of Hispanic voters to elect their candidate of choice in HD90, together with the lack of discriminatory intent, the substantial interests of maintaining existing opportunity to elect and avoiding voter confusion outweigh the need to redraw HD90 for a single election.

Defendants understand that the Task Force intends to propose that the Court return HD90 to its configuration under Plans H283 and H309. Among other changes, this would remove the Como neighborhood from HD90 and place it in HD99. To the extent the proposed remedy would remove Como from HD90, it goes further than necessary to remedy the violation because the Legislature's decision to return Como to HD90 was not a race-based decision and therefore not part of the violation. As this Court found, the decision to return Como to HD90 "was simply meant to bring Como back to its long-held place in HD90, where its constituents wanted to be." *Perez v. Abbott*, 267 F. Supp. 3d at 794. The finding of a *Shaw* violation rested "on changes made to HD90 after Como was moved back into HD90." *Id.*; *see also id.* at 792 (finding racial motivation behind "changes made between Plan H328 and Plan H342"). The State contends no remedy is necessary in HD90. However, in the event the Court were to find that a remedy is required, any remedy should be limited to the district boundaries that resulted from the unjustified consideration of race. *See, e.g., John Doe #1 v. Veneman*, 380 F.3d 807, 818 (5th Cir. 2004) (explaining that courts "must narrowly tailor an injunction to remedy the specific action which gives rise to the order"); *see also Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (holding that "the scope of injunctive relief is

dictated by the extent of the violation established”). Here, to the extent the Court determines that HD90 requires a remedy, that remedy should focus on the specific changes made after Como was returned to the district.

**CONCLUSION**

For the reasons stated above, no remedy is necessary in HD90.

Date: August 6, 2018

Respectfully submitted.

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