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-CV-360-OLG-JES-XR**
STATE OF TEXAS, ET AL.	§	**CONSOLIDATED ACTION**
	§	**[Lead case]**
Defendants	§	

TASK FORCE PLAINTIFFS' RESPONSE TO DEFENDANTS' ADVISORY REGARDING HD90

Plaintiffs Texas Latino Redistricting Task Force, *et al*. ("Task Force Plaintiffs") submit this response to State Defendants' advisory regarding House District 90 ("HD90"). *See* Def. Advisory [Dkt. 1591]. State Defendants' request that this Court impose no remedy, and State Defendants' alternative proposal that this Court unnecessarily undertake a legislative function, are both unsupported by the law.

State Defendants first ask this Court to impose no remedy and essentially ignore its ruling, affirmed by the U.S. Supreme Court, that HD90 is unconstitutionally racially gerrymandered. *See* Def. Advisory at 2 ("no remedy is necessary in HD90"). However, this is not the "unusual case in which . . . an impending election is imminent and a State's election machinery is already in progress [such that] equitable considerations might justify a court in withholding the granting of immediately effective relief." *Reynolds*, 84 S. Ct. at 1394. This Court has already stated that there will be no changes to districts, including to HD90, until after the 2018 election cycle. *See* Order [Dkt. 1586] at 2. The exception discussed in *Reynolds* does not apply here where the 2020 election is not imminent and the State presents no other equitable

considerations to justify refraining from entering a remedy for HD90. Instead, Task Force Plaintiffs urge the Court to follow the general rule that a legal or constitutional violation in redistricting should be remedied. *See, e.g., Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1022 (8th Cir. 2006) ("When a Section 2 violation is found, the district court is responsible for developing a constitutional remedy."); *Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1415 (E.D. Wash. 2014) (plaintiffs entitled to a redistricting plan remedying violation of Voting Rights Act); *Johnson v. Miller*, 929 F. Supp. 1529, 1562 (S.D. Ga. 1996) ("This case is not one of those unusual cases in which we would be justified in standing by and allowing constitutional violations to go unremedied"); *Smith v. Beasley*, 946 F. Supp. 1174, 1212 (D.S.C. 1996) ("the court recognizes that individuals in the infirm districts whose constitutional rights have been injured by improper racial gerrymandering have suffered significant harm. Those citizens are entitled to have their rights vindicated as soon as possible so that they can vote for their representatives under a constitutional apportionment plan…").

State Defendants' alternative request—that the Court step into the shoes of the Legislature and reweigh legislative considerations, including incumbency protection and the preferences of adjacent office holders, would strand the Court in a role against which the Supreme Court has specifically advised. *See* Def. Advisory at 4 (proposing that the Court redraw HD90 to include some but not all of the changes made by the Legislature in 2013).

As this Court found, the Legislature's 2013 changes to HD90 flowed from the desire of HD90's Anglo incumbent to draw in a precinct that "had supported him" after the incumbent had narrowly retained his seat in a racially contested primary election. *See Perez v. Abbott*, 267 F. Supp. 3d 750, 791 (W.D. Tex. 2017), *aff'd in part, rev'd in part and remanded*, 138 S. Ct. 2305 (2018). The inclusion of Como in HD90 was inextricably tied to the racial gerrymander and one

would not have happened without the other. Texas urges the Court to take up the Legislative task of reweighing: the desire of that Anglo incumbent for reelection (even though he is no longer in office); the interests of other potentially affected office holders whose districts are adjacent to HD90 and who may or may not want their districts altered before the 2020 election; the interests of Latino residents of HD90 who supported the 2011 configuration of the district; and a host of additional redistricting considerations including preservation of local jurisdictional boundaries and avoiding splitting precincts.

However, the Court may not substitute its own "reapportionment preferences" for those of the Legislature. *See Upham v. Seamon*, 102 S. Ct. 1518, 1520 (1982) (reversing court when it "simply substituted its own reapportionment preferences for those of the state legislature"). The Legislature never adopted the configuration of HD90 that State Defendants ask this Court to adopt in the alternative, even though the Legislature had the option of adopting that configuration in both 2011 and 2013. *See Perez*, 267 F. Supp. 3d at 788, 789.

The cases on which State Defendants rely do not deal with redistricting. State Defendants cannot justify the Court's adoption of a remedy consisting of a plan that the Legislature twice chose not to adopt.

For the foregoing reasons, Task Force Plaintiffs respectfully maintain their request that the Court adopt HD90's configuration as drawn by the Legislature in H283/H309 (also presented in H407) as an appropriate remedy to the racial gerrymander of HD90. *See* Dkt. 1590.

DATED: August 10, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2018, I served a copy of the foregoing document on all counsel who are registered to receive NEFs through this Court's CM/ECF system. All attorneys who are not registered to receive NEFs have been served via email.

/s/ Nina Perales
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