

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]

MALC SUBMISSION IN RESPONSE TO FEBRUARY 23, 2019 ORDER (DKT. 1619)

On February 23, 2019, this Court directed the parties to “respond to Defendant’s advisory concerning the use of Plan H328” as a remedy to the Constitutional violation found by this Court and to notify the Court of any alternative proposals. In response to that order, Plaintiff MALC submits Plan H411.¹

In its Order of August 30, 2018, this Court determined that the proposals submitted to that point by the State of Texas and by Task Force Plaintiff were not sufficient to meet this Court’s obligation to fashion a remedy for the unconstitutional racial gerrymander in HD 90 contained in H358. (Dkt. 1600, pp.1-2). The Task Force submitted the 2011 plan’s (H283) rendition of HD 90 and the State suggested that no remedy was required, or if a remedy was required that the Court should only remedy those specific lines between H328 and H342. *Id.*

Now, the State suggests that H328 should be used as a remedy of the racial gerrymander found by this Court.

¹ MALC submits H411 as its remedial proposal here, but does not oppose the proposal offered by Plaintiff Task Force.

To begin, HD 90 was configured in 2011 in Plan H283 as a majority-Latino in HCVAP using 2008-2010 ACS data and majority SSVR district.

H328 is the plan first suggested by Rep. Burnam to restore a non-Latino community to the district (Como), after a close primary challenge from a Latino candidate. *Perez v. Abbott*, 267 F. Supp. 3d 750, 789 (W.D. Tex. 2017)(aff’d in relevant part). However, H328 was never voted upon nor approved by the Legislature because Rep. Burnam amended his own proposal before any legislative action was taken, in an effort to restore HD 90’s majority HCVAP and majority SSVR status. Those efforts however were not narrowly tailored and relied on race in an impermissible way. *See Perez v. Abbott*, 267 F. Supp. 3d at 794.

The State’s proposal of H328, was never put to a vote and provides this Court with no “legislative choices made in 2013.” *See Whitcomb v. Chavis*, 403 U.S. 124, 160-1 (1971). The only evident legislative choices that reflect the will of the Texas Legislature as to HD 90 in 2013 are: 1) that Como be placed in HD 90; and 2) that HD 90 be a majority SSVR district.

MALC’s proposed H411, keeps HD 90’s majority HCVAP and SSVR status and protects the choices made by the Texas Legislature in 2013 to move Como into the HD90. H411 unlike H358 makes only minor non-intrusive changes to H328 (two small voting precincts)(whose population is neither majority Anglo nor majority African American), nor significant in the number of voters affected (less than 4,000).

The following is a comparison of the different versions of HD 90 in the different plans submitted to this Court:

| PLANS | HCVAP (2013-2017 ACS) | SSVR (2018 Election) | SSVR Non-Suspense (2108 Election) | SSTO (2018 Election) |
|---------------------------------------|--------------------------------------|---------------------------------|--|---------------------------------|
| PLAN H 411 (MALC Proposal) | 55.8 % | 50.6 % | 52.5 % | 49.7 % |

| PLAN H 328 (State Proposal) | 54.8 % | 49.8 % | 51.8 % | 48.8 % |
|--|--------|--------|--------|--------|
| PLAN H 358 (Current Plan) | 56.6 % | 51.6 % | 53.5 % | 51.0 % |
| PLAN H 283 (2011 Plan) | 57.1 % | 52.7 % | 54.7 % | 52.0 % |

(Source RED 119 Reports for PLANs H 411, 328, 358 and 283)

Plaintiff MALC's proposal accomplishes the goals of the 2013 legislature in a narrowly tailored fashion, and provides a remedy to the racial gerrymander found by this Court, yet maintains a fair opportunity for Latino voters of HD 90 to continue having an effective voice in both primary and general elections in HD 90. Therefore, MALC respectfully submits H411 as its proposal to this Court.

MALC has previously submitted plan H411 to the State and to the Task Force Plaintiff. MALC has been advised by the Task Force Plaintiff that they do not oppose H411 and by the State that they are still evaluating the plan.

DATED: March 11, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of March, 2019, I electronically filed the foregoing using the CM/ECF system which will send notification of such filing to all counsel of record who have registered with this Court's ECF system.

/s/ Jose Garza
JOSE GARZA