

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]

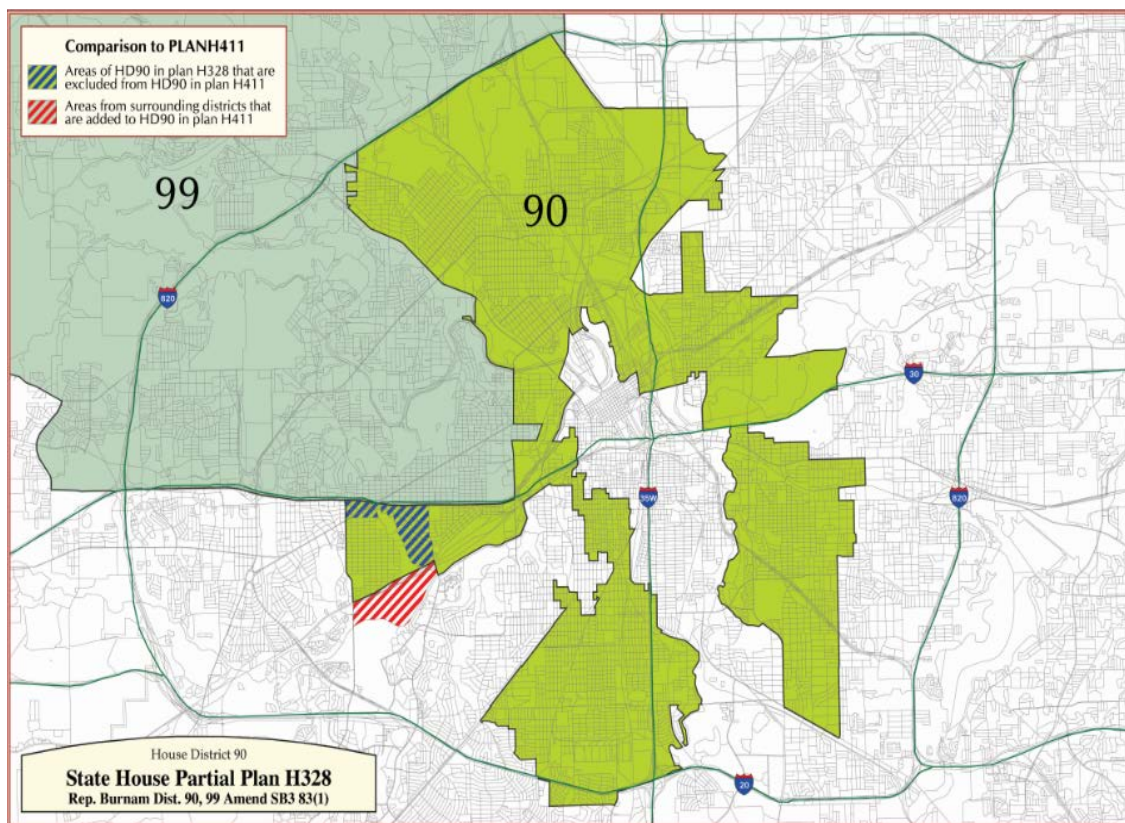
**DEFENDANTS' REPLY TO MALC AND TLRTF'S RESPONSES REGARDING
REMEDY FOR STATE HOUSE DISTRICT HD90**

On February 23, 2019, the Court ordered Plaintiffs “to respond to Defendants’ advisory concerning the use of Plan H328 and notify the Court of any alternative proposals” by March 11, 2019. ECF No. 1619. On that date, TLRTF and MALC independently submitted their own proposed plans. ECF Nos. 1620, 1621.

TLRTF resubmitted Plan H407, a proposed remedial plan that seeks to return HD90 to its configuration under Plan H283 and remove the Como neighborhood from HD90. But the Court has already considered and rejected Plan H407. ECF No. 1600. The *Shaw* violations found by the Court “rest on changes made to HD90 after Como was moved back into HD90.” *Perez v. Abbott*, 267 F. Supp. 3d 750, 794 (W.D. Tex. 2017); *see also id.* at 792 (finding racial considerations behind “changes made between Plan H328 and Plan H342”). Plan H407 is therefore inconsistent with the Court’s

instruction that any remedy in HD90 “must respect the legislative choices made in 2013, except to remedy the constitutional violations.” ECF No. 1600 at 2. Accordingly, the Court has already considered and rejected Plan H407, finding that it “exceeds the scope of the violation found by the Court.” *Id.*

In response to the Court’s February 23, 2019 order, MALC submitted Plan H411. ECF No. 1619. Plan H411 is identical to Defendants’ proposal, Plan H328, except for two changes made to the Western portion of HD90. Those changes appear to involve fewer than 3,500 residents and appear to increase the HCVAP and SSVR numbers of HD90 by less than 1%.



Overlay Map comparing Plan H328 and Plan H411.

Unlike TLRTF's proposed Plan H407, MALC's proposed Plan H411 maintains Como in HD90 consistent with the choices made by the Texas Legislature in 2013 and this Court's prior determination that the decision to return Como to HD90 was neither "a race-based decision," *Perez*, 267 F. Supp. 3d at 791, nor "a purposefully discriminatory device meant to minimize, cancel out, or dilute the Latino vote," *id.* at 794.

Like Plan H328, MALC's proposed Plan H411 appears to accomplish the Legislature's goal of returning Como to HD90, and it eliminates the changes that led this Court to find racial gerrymandering. While Defendants maintain that Plan H328 is a more narrowly tailored remedy, in view of the Court's prior decisions, MALC Plan H411 appears to remedy the violation found by this Court.¹

CONCLUSION

Defendants request the adoption of Plan H328, which provides a complete remedy for the constitutional violation found by this Court while respecting the Legislature's choices made in 2013. Defendants recognize, however, that Plan H411 also appears to remedy the constitutional violation while respecting the Legislature's choices. While Defendants believe Plan H328 provides a more narrowly tailored remedy, Defendants raise no legal objection to Plan H411.

¹ TLRTF contends that between H328 and H411, "H411 better satisfies the goals of repairing the racial gerrymander and maintaining Latino voting strength in HD90." *See* ECF No. 1621 at 4.

Date: March 18, 2019

Respectfully submitted.

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