IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SUE EVENWEL AND EDWARD PFENNINGER,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	**CAUSE NO. 1:14-CV-00335-LY-CH-MHS**
	§	
RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS; AND NANDITA BERRY, IN HER OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE	§	
	§	
Defendants.	§	

DEFENDANT-INTERVENORS' RESPONSE TO PLAINTIFFS' SUPPLEMENTAL OPPOSITION TO MOTION TO INTERVENE

The Texas Senate Hispanic Caucus, Armando Garza, Francisco Guajardo, Reynaldo Guerra, Evelyn Jones, Sofia Reyes McDermott and Sandra Chrostowski on behalf of Cassandra Chrostowski ("Defendant-Intervenors") respond as follows to Plaintiffs' supplemental filing[1] of August 11, 2014:

Plaintiffs mischaracterize the holding of the Fifth Circuit in *Veasey v. Perry*, No. 14-40003 (5th Cir. August 5, 2014), declaring "the court held that, so long as both Texas and True the Vote sought the same relief on the complaint as pled—upholding the statute

[1] As an initial matter, Plaintiffs' "Supplement" is not properly filed pursuant to Fed. R. Civ. P. 24. Rule 24 addresses intervention of a party, not the filing of documents after the close of briefing on a motion. Second, the Fifth Circuit decision in *Veasey* is not published. Pursuant to 5TH CIR. R. 47.5, the decision is not precedent in this case.

as constitutional—True the Vote's interests were being adequately represented in the litigation." On the contrary, the Fifth Circuit in *Veasey* applied the requirement, embodied in Rule 24, that in order to intervene as of right proposed intervenors must establish that their interests are not represented adequately by existing parties. *Veasey* did not hold, and it is not the standard in the Fifth Circuit, that similarity in the relief sought by a proposed intervenor defeats intervention as of right.

In *Veasey*, the Fifth Circuit concluded that proposed intervenor True the Vote had "not shown that the State of Texas cannot adequately represent its interests in this litigation[.]" Slip Op. at 2. The Fifth Circuit explained that although the requirement to show inadequate representation is "'minimal,' . . . this requirement must have some teeth." Id. at 5. In the case at hand, proposed Defendant Intervenors have demonstrated that they have a sufficient "adversity of interest" from the State of Texas to support intervention as of right. *See Brumfield v. Dodd*, 749 F.3d 339, 345 (5th Cir. 2014) (quoting *Edwards v. City of Houston*, 78 F.3d 983, 1005 (5th Cir. 1996) (en banc)).

As set out in proposed Defendant Intervenors' motion, their "disalignment of interest" with the State of Texas (*Veasey* slip op. at 5) flows from their position as individual voters and an association of elected officials seeking to ensure that they can cast a ballot and represent constituents in a non-dilutive redistricting plan. The State of Texas has an unfortunate history of enacting and defending redistricting plans that dilute Latino voting strength. *See, e.g. LULAC v. Perry*, 548 U.S. 399 (2006) (invalidating the Texas congressional redistricting plan under section 2 of the Voting Rights Act). Last year, Texas settled claims of racial discrimination in its most recent state senate redistricting plan by agreeing to the restoration of a potential minority coalition district in

Dallas Ft. Worth. *Davis v. Perry*, No. 5:11-cv-00788 (W.D.Tex. September 4, 2013) (Dkt.190).

Here, there is no doubt that the relief Plaintiffs seek in this case – which would force apportionment of residents across state senate districts based on CVAP instead of total population (or some unspecified combination of CVAP and total population) – will dilute proposed Defendant-Intervenors' political strength; negatively impact the quality of proposed Defendant-Intervenors' political representation; reduce proposed Defendant-Intervenors' access to their elected representatives or reduce proposed Defendant-Intervenors' ability to represent their constituents. Because this lawsuit targets senate districts with lower CVAP, it also targets Latino opportunity districts and threatens to reduce the ability of Latinos to elect their candidates of choice in senate districts such as Senate Districts 6, 13 and 27. Such effects will undoubtedly impact the viability and strength of the Senate Hispanic Caucus and the ability of its members to respond to the needs of their constituents.

Proposed Defendant-Intervenors oppose any relief that would reduce the weight of their vote or disproportionately increase the population in their senate districts. By contrast, Texas's interest is in preserving its current apportionment system. As a result, proposed Defendant-Intervenors "occup[y] a different position and [have] different interests" than the existing defendants. *Sierra Club v. Fed. Emergency Mgmt. Agency*, No. 07-0608, 2008 U.S. Dist. LEXIS 47405, at *18-19 (S.D. Tex. June 11, 2008).

Given that the State's interest are essentially institutional, Texas has an incentive to settle this case in order to avoid the political and financial costs of having to enact new

redistricting legislation. Even assuming Defendants' best intentions, Texas may be hesitant to advance relevant arguments for apportionment based on total population – regardless of age or citizenship – because it would expose them to severe public scrutiny and criticism in this highly controversial case.

The possibility that Defendants may not advocate for an apportionment standard based on total population, as opposed to a standard of their choosing, is sufficient to satisfy Movants' minimal burden that Defendants representation "may be" inadequate. *Trbovich v. United Mine Workers of Am*., 404 U.S. 528, 538 n. 10 (1972). As noted in *Veasey*, a government agency's focus on what it believes to be in the public interest is sufficiently incongruous from the interests of individuals with a personal stake in the outcome of the case. *Veasey* slip op. at 3, citing *Sierra Club v. Espy*, 18 F.3d 1202, 1208 (5th Cir. 1994).

DATED: August 22, 2014

Respectfully submitted,

MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of August, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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