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## INTRODUCTION

Two days ago, a second redistricting case was filed in this district. The Court should consolidate it with this case to promote the efficient use of judicial and party resources and avoid inconsistent adjudications. Defendants respectfully request consolidation under the first-to-file rule and Federal Rule of Civil Procedure 42.

## BACKGROUND

The League of United Latin American Citizens and other plaintiffs (the “LULAC Plaintiffs”) filed a new redistricting case in the El Paso Division on Monday. *See* Complaint for Declaratory and Injunctive Relief, *LULAC v. Abbott*, No. 3:21-cv-00259 (W.D. Tex. Oct. 18, 2021) (Ex. A). That suit overlaps significantly with this one. The two redistricting cases involve similar or identical parties, issues to be decided, and relief sought. And both cases must be decided by a three-judge district court.

*Parties:* The LULAC Plaintiffs purport to represent the interests of minority voters, *see* Ex. A ¶¶ 11–20, just as the Tejano Democrats do in this suit, *see* ECF 1 ¶ 5. In both cases, the defendants are Governor Abbott and Deputy Secretary Esparza. *See* Ex. A ¶¶ 28–29; ECF 1 ¶¶ 6–7.

*Issues:* Like the complaint already before this Court, the new complaint challenges the lawfulness of the old maps based on the one-person-one-vote principle and the validity of the new maps. Ex. A ¶ 105 (alleging the old maps “are unconstitutionally malapportioned”); *id.* ¶ 110 (alleging the new House map “violates the one person, one vote principle”); ECF 1 ¶ 31 (alleging that “[t]he current statewide districting map for the State House and State Senate districts are malapportioned”).

*Relief:* Both sets of plaintiffs seek similar relief. First, the LULAC Plaintiffs ask for “a declaratory judgment finding that [the old maps] are unconstitutionally malapportioned.” Ex. A at 24. The plaintiffs in this case (the “Gutierrez Plaintiffs”) seek a similar declaration. ECF 1 at 10. Second, the LULAC Plaintiffs also ask, if certain conditions are met, that the Court “order new redistricting plans.” Ex. A at 25. Similarly, the Gutierrez Plaintiffs have moved this Court to consider “alternate

interim maps for use during the 2022 election cycle.” ECF 10-2 at 2. Finally, both sets of plaintiffs seek costs, fees, and “further relief.” Ex. A at 25; ECF 1 at 10.

*Court:* Both cases were filed in the Western District of Texas. *See* Ex. A; ECF 1. Both cases also require a three-judge district court under 28 U.S.C. § 2284, as both the LULAC Plaintiffs and the Gutierrez Plaintiffs acknowledge. Ex. A ¶ 113; ECF 1 ¶ 11.

## ARGUMENT

This Court should consolidate the LULAC Plaintiffs’ case into this case. Both the first-to-file rule and Federal Rule of Civil Procedure 42 support consolidation here.

### I. The First-to-File-Rule Supports Consolidation in This Court

The Fifth Circuit’s first-to-file rule applies when parties file multiple substantially similar lawsuits. *See Yeti-Coolers, LLC v. Beavertail Prods., LLC*, No. 1:15-cv-415-RP, 2015 WL 4759297, at \*1–2 (W.D. Tex. Aug. 12, 2015) (Pitman, J.) (explaining the first-to-file rule). It is designed “to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result.” *Sutter Corp. v. P&P Indus., Inc.*, 125 F.3d 914, 917 (5th Cir. 1997) (quoting *W. Gulf Mar. Ass’n v. ILA Deep Sea Local 24*, 751 F.2d 721, 728–29 (5th Cir 1985)).

For the rule to apply, the lawsuits do not have to be “identical,” but rather need only “overlap on the substantive issues.” *See Mann Mfg. Inc. v. Hortex, Inc.*, 429 F.2d 403, 408 n.6 (5th Cir. 1971). And where “the overlap between two suits ‘is less than complete, the judgment is made case by case, based on such factors as the extent of overlap, the likelihood of conflict, the comparative advantage and the interest of each forum in resolving the dispute.’” *Save Power Ltd. v. Syntek Fin. Corp.*, 121 F.3d 947, 948 (5th Cir. 1997) (quoting *TPM Holdings, Inc. v. Intra-Gold Indus., Inc.*, 91 F.3d 1, 4 (1st Cir. 1996)).

The first-to-file rule “not only determines which court may decide the merits of substantially similar cases, but also establishes which court may decide whether the second suit filed must be

dismissed, stayed or transferred and consolidated.” *Sutter*, 125 F.3d at 917. Thus, the consolidation issue is properly before this Court, not the El Paso court.

As explained above, these two redistricting cases substantially overlap. They involve similar plaintiffs and identical defendants. They both present standard redistricting issues, including whether the maps currently in effect are malapportioned. *See* Ex. A ¶ 105; ECF 1 ¶ 31. They ask for the same type of relief, including declaratory judgments and court-drawn maps. Ex. A at 24–25; ECF 1 at 10; ECF 10-2 at 2.

Because these “two cases are . . . very similar, efficiency concerns dictate that only one court decide both cases” *Netlist, Inc. v. SK Hynix Inc.*, No. 6:20-CV-00194-ADA, 2021 WL 2954095, at \*2 (W.D. Tex. Feb. 2, 2021) (quoting *In re Telebrands Corp.*, 773 F. App’x 600, 602 (Fed. Cir. 2016)). True, these two redistricting cases are not literally identical, but consolidation “does not . . . require that cases be identical.” *Save Power Ltd.*, 121 F.3d at 950. “The crucial inquiry is one of ‘substantial overlap.’” *Id.* Defendants have met that standard here.

Perhaps most importantly, allowing these cases to proceed separately could result in two federal courts drawing two different sets of maps. That would impermissibly subject Defendants to inconsistent obligations. Consolidation is particularly appropriate where “a conflicting ruling could arise.” *Hart v. Donostia LLC*, 290 F. Supp. 3d 627, 632 (W.D. Tex. 2018) (citing *In re Jimmy John’s Overtime Litig.*, 877 F.3d 756, 766 (7th Cir. 2017)). Only in that way can the first-to-file rule serve its purpose: to “avoid piecemeal resolution of issues that call for a uniform result.” *Sutter*, 125 F.3d at 917.

To be sure, the first-to-file rule is subject to an exception in “compelling circumstances,” but that exception does not apply here. *Youngblood v. JTH Tax Servs., Inc.*, No. SA:06-CA-380-XR, 2006 WL 1984656, at \*2 (W.D. Tex. July 17, 2006) (citing *Mann*, 438 F.2d at 407). Compelling circumstances exist “where a court determines that a party engaged in bad faith conduct, by inducing an opposing

party to delay filing of a lawsuit, so that he could file a preemptive lawsuit.” *Sirius Computer Sols., Inc. v. Sparks*, 138 F. Supp. 3d 821, 827 (W.D. Tex. 2015) (quoting *Chapa v. Mitchell*, No. A:05-CV-769-N, 2005 WL 2978396, at \*2 (W.D. Tex. Nov. 4, 2005)). Defendants have not filed a lawsuit at all, much less in bad faith. Nor did Defendants induce the LULAC Plaintiffs to delay filing their suit. That the Gutierrez Plaintiffs filed first is not attributable to Defendants.

Nor does this Court need to decide whether it or the El Paso court properly has subject-matter jurisdiction before consolidating under the first-to-file rule. The Fifth Circuit has expressly rejected the argument “that the first-to-file rule should include a precondition that requires the district court to find proper jurisdiction in the first-filed court before applying the rule at all.” *Cadle Co. v. Whataburger of Alice, Inc.*, 174 F.3d 599, 603 (5th Cir. 1999) (remanding with instructions to transfer under the first-to-file rule). “[R]esolving [a jurisdictional] dispute in favor of that court’s jurisdiction is never a condition precedent to applying” the first-to-file rule. *Id.* at 605.

In short, the first-to-file rule provides that where two cases “overlap on the substantive issues,” they should “typically” be “consolidated in . . . the jurisdiction first seized of the issues.” *Sutter*, 125 F.3d at 917 (quoting *Mann*, 439 F.2d at 408 n.6). In that circumstance, consolidation in “the first-filed action is preferred.” *Intertrust Techs. Corp. v. Cinemark Holdings, Inc.*, No. 2:19-cv-00266-JRG, 2020 WL 6479562, at \*7 (E.D. Tex. Sept. 30, 2020) (quotation omitted). These cases overlap on the substantive issues, and should therefore be consolidated in this Court under the first-to-file rule.

## **II. Rule 42 Supports Consolidation in This Court**

Rule 42(a) of the Federal Rules of Civil Procedure provides that a court may consolidate two or more related actions if they involve “a common question of law or fact.” These cases satisfy that threshold requirement. They involve numerous common questions, including whether the old maps violate the one-person-one-vote principle, whether the new maps are valid, and whether a federal court can and should order Governor Abbott and Deputy Secretary Esparza to use court-drawn maps.

Once that threshold requirement is satisfied, consolidation is discretionary, but “[i]n this Circuit, district judges have been ‘urged to make good use of Rule 42(a) . . . in order to expedite the trial and eliminate unnecessary repetition and confusion.’” *Gentry v. Smith*, 487 F.2d 571, 581 (5th Cir. 1973) (quoting *Dupont v. S. Pac. Co.*, 366 F.2d 193, 195 (5th Cir. 1966), *cert. denied*, 386 U.S. 958 (1967)).

Whether to consolidate is guided by five factors: (i) whether the actions were filed in the same court, (ii) whether the actions involve the same parties, (iii) the extent to which the actions involve common questions of law or fact, (iv) the risk of confusion if the actions are consolidated as compared to the risk of inconsistent adjudications if they are not, and (v) the extent to which consolidation will conserve judicial resources. *See Frazier v. Garrison Indep. Sch. Dist.*, 980 F.2d 1514, 1531–32 (5th Cir. 1993); *see also Holmes v. City of San Antonio Airport*, No. 5:21-cv-00267, 2021 WL 2878548, at \*1 (W.D. Tex. Apr. 26, 2021) (citing *Parker v. Hyperdynamics Corp.*, 126 F. Supp. 3d 830, 835 (S.D. Tex. 2015)). Courts also consider “whether the cases are at different stages of preparation.” *Bryson v. Plaza Oaks BPRE Invs., Inc.*, No. 7:16-cv-029-DAE, 2016 WL 8856641, at \*2 (W.D. Tex. Sept. 8, 2016) (citing *Mills v. Beech Aircraft Corp.*, 886 F.2d 758, 762 (5th Cir. 1989)).

Here, each of those factors favors consolidation.

#### **A. The Actions Were Filed in the Same Court**

The first factor asks whether the actions were filed before the same court. It is derived from the rule that cases from different districts may not be consolidated. *See Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure* § 2382 (5th ed. 2019); *see also Wion v. Dretke*, No. MO-05-cv-146, 2006 WL 8441507, at \*2 (W.D. Tex. July 14, 2006) (citation omitted). If parties wish to consolidate a case from another district, it must first be *transferred* to the home district. *See Mann*, 429 F.2d at 408.

This factor weighs in favor of consolidation because both cases were filed in the Western District of Texas. That they were filed in different divisions makes no difference because the rule requires only that the cases be before the same *district*, not the same *division*. *Wion*, 2006 WL 8441507,

at \*2 (citing *Santucci v. Pignatello*, 188 F.2d 643, 645 (D.C. Cir. 1951)); *see also Texas v. United States*, No. 6:21-cv-00016, 2021 WL 3171958, at \*2 (S.D. Tex. July 26, 2021) (citing *Wharton v. U.S. Dep't of Hous. & Urban Dev.*, No. 2:19-cv-300, 2020 WL 6749943, at \*2 (S.D. Tex. Mar. 3, 2020)).

### **B. The Actions Involve Substantially Similar Parties**

The second factor asks whether and to what extent the actions involve similar parties. As party overlap increases, so too does the efficiency gained by consolidation. *See, e.g., Samarto v. Keller Williams Realty, Inc.*, No. 1:21-cv-76-RP, 2021 WL 3596303, at \*2–3 (W.D. Tex. Apr. 27, 2021) (Pitman, J.) (noting common parties, ordering consolidation); *Raymond v. Invest Props., LLC*, No. SA-20-CV-00965-FB, 2021 WL 725819, at \*2–3 (W.D. Tex. Feb. 17, 2021) (same); *compare Brown v. Fort Hood Fam. Hous. LP*, No. 5:20-CV-00704, 2020 WL 10758046, at \*2 (W.D. Tex. Sept. 25, 2020) (noting no common parties, denying consolidation).

This factor weighs in favor of consolidation because the actions involve substantially similar parties. The Defendants are identical: Governor Abbott and Deputy Secretary Esparza. True, there are different plaintiffs, but they both purport to represent the interests of minority voters. *See* Ex. A ¶¶ 11–20; ECF 1 ¶ 5.

### **C. The Actions Involve Similar Issues**

The third factor asks whether and to what extent the actions involve similar questions of fact or law. Similar to the second factor, as the overlap of factual and legal issues increases, so too does the efficiency gained by consolidation. This is so because where substantially similar cases are not consolidated, discovery and motion practice are “likely to be highly duplicative, which risks unnecessary costs and delay.” *Dryshod Int'l, LLC v. Haas Outdoors, Inc.*, No. 1:18-CV-596-RP, 2019 WL 5149860, at \*2 (W.D. Tex. Jan. 18, 2019) (Pitman, J.); *see also Samataro*, 2021 WL 3596303, at \*3.

This factor weighs heavily in favor of consolidation because the two actions present numerous common issues. Both cases ask the Court to decide whether the old maps are malapportioned. *See* Ex.

A ¶ 105 (alleging the old maps “are unconstitutionally malapportioned”); ECF 1 ¶ 31 (alleging that “[t]he current statewide districting map for the State House and State Senate districts are malapportioned”). In both cases, the plaintiffs challenge to the validity of the new maps. *See, e.g.*, Ex. A ¶ 110); ECF 1 ¶ 41. As a result, both cases will involve the same type of evidence, including demographic data related to the maps. And both cases present questions about whether the Court can and should order Governor Abbott and Deputy Secretary Esparza to use court-drawn maps. *See* Ex. A at 25; ECF 10-2 at 2.

**D. There is Little Risk of Confusion if the Cases are Consolidated, But Great Risk of Prejudice from Inconsistent Adjudications if They are Not**

The fourth factor asks the Court to weigh the risk of confusion if the cases are consolidated against the risk and prejudice of inconsistent adjudications if they are not. On the one hand, a jury may improperly blend the issues in a consolidated case. And on the other, the same issue may be inconsistently decided in unconsolidated cases. *See, e.g., Yeti Coolers*, 2015 WL 4759297, at \*2; *Lay v. Spectrum Clubs, Inc.*, No. SA-12-CV-00754-DAE, 2013 WL 788080, at \*2–3 (W.D. Tex. Mar. 1, 2013).

This factor weighs heavily in favor of consolidation. Inconsistent adjudications would be especially prejudicial in these circumstances. Both sets of plaintiffs ask for court-drawn maps. *See* Ex. A at 25; ECF 10-2 at 2. Needless to say, having two separate sets of court-drawn maps would place Defendants in an untenable position. Courts impose court-drawn maps through injunctive relief, so Defendants would face inconsistent obligations on pain of contempt. This reason alone suffices to justify consolidation. *See Dupont*, 366 F.2d at 196 (“Where prejudice to rights of the parties obviously results from the order of consolidation, the action of the trial judge has been held reversible error”); *Compare Jine v. OTA Corp.*, No. SACV 20-00769, 2020 WL 7129374, at \*13–14 (C.D. Cal. Sept. 11, 2020) (multiple plaintiffs sought injunctive relief, ordering consolidation) *with LeGrand v. N.Y. Transit Auth.*, No. 95-cv-0333, 1999 WL 342286, at \*5 (E.D.N.Y. May 26, 1999) (no possibility of “inconsistent injunctive relief,” denying consolidation).

Similarly, both cases are likely to include similar discovery. Inconsistent resolution of privilege issues, for example, would be especially harmful. If the first court sustained a privilege objection while the second court overruled the same objection, the disclosure required by the second court's ruling would effectively undermine the first court's ruling.

In the end, statewide redistricting cases "call for a uniform result." *Yeti Coolers*, 2015 WL 4759297, at \*1 (quoting *Int'l Fid. Ins. Co. v. Sweet Little Mexico Corp.*, 665 F.3d 671, 678 (5th Cir. 2011)) (quoting *Sutter*, 125 F.3d at 917).

On the other side of the scale, consolidation poses no risk of confusion or prejudice. Because both complaints raise only equitable claims, there will not be a jury that could be confused by consolidation. To the extent consolidation would pose *any* procedural confusion, it would be greatly outweighed both parties' uniformity interest.

#### **E. Consolidation Will Conserve Judicial Resources**

The fifth and final factor asks whether consolidation will conserve resources and promote judicial economy. Consolidation promotes judicial economy where the related actions will draw from the same witnesses or other sources of discovery, involve similar legal briefing, turn on similar issues of fact or law, or are otherwise able to efficiently proceed together. *Frazier*, 980 F.2d at 1532; *Dryshod*, 2019 WL 5149860, at \*2; *RTIC Drinkware LLC v. YETI Coolers, LLC*, No. 1:16-cv-907-RP, 2017 WL 5244173, at \*3 (W.D. Tex. Jan. 18, 2017)(Pitman, J.); *Lay*, 2013 WL 788080, at \*3.

This factor weighs in favor of consolidation because it will prevent unnecessary litigation. There is no need for two different courts to decide the same redistricting issues, and there is no need or the parties to go through two separate rounds of discovery.

#### **F. The Actions are at an Early Stage of Development**

Some courts also consider whether the actions are at similar stages of development. In this regard, it is efficient to consolidate cases that are both newly filed, or both ready for trial. Likewise, it

is inefficient to consolidate cases that are at starkly different stages in the litigation process. *See, e.g., RTIC Drinkware*, 2017 WL 5244173, at \*3 ; *Lay*, 2013 WL 788080, at \*3.

This factor weighs in favor of consolidation because both actions are at very early stages of development and were filed only six weeks apart. Further, neither this Court nor the El Paso court has held an initial conference. Nor have the parties in either case started discovery. Consolidation at this early stage does not delay either action or impose any additional logistical concerns.

\* \* \*

The cases should be consolidated here, rather than in the *LULAC* case. The “common practice” in the Western District of Texas is “for cases to be consolidated into the first-filed case.” *Holmes v. City of San Antonio*, No. 5:21-cv-00274, 2021 WL 2878551, at \*2 (W.D. Tex. Mar. 30, 2021).

Moreover, Austin is a more convenient forum for the parties, witnesses, and counsel. None of the institutional LULAC Plaintiffs appears to be headquartered in El Paso, and none claims to be in the complaint. *See* Ex. A ¶¶ 11–20. Many of them routinely litigate in other fora. Indeed, Defendants are currently involved in independent litigation brought by many of the LULAC Plaintiffs—LULAC, LUPE, Mi Familia Vota, the Southwest Voter Registration Education Project, the Mexican American Bar Association of Texas, Texas Hispanics Organized for Political Education, the William C. Velazquez Institute, and Fiel Houston, Inc.—in San Antonio, which is much closer to Austin than El Paso. *See La Union Del Pueblo Entero v. Abbott*, No. 5:21-cv-0844-XR. The Individual LULAC Plaintiffs allege they reside in Austin, San Antonio, Corpus Christi and Louise, Texas. *See* Ex. A ¶¶ 21–25. Each one of those cities is much closer to Austin than El Paso. Further, each of the four attorneys representing them offices in San Antonio, which is a much shorter distance from Austin than El Paso. Thus, Austin is a far more convenient forum for the Individual LULAC Plaintiffs and their counsel. In any event, consolidation in the Austin Division poses no inconvenience with respect to travel because the Western District has been conducting all proceedings remotely.

**CONCLUSION**

Defendants respectfully request that the Court consolidate the *LULAC* matter into this matter.

Date: October 20, 2021

Respectfully submitted.

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**CERTIFICATE OF CONFERENCE**

I certify that on October 20, 2021, counsel for the Defendants conferred with counsel for Plaintiffs about the foregoing motion. Plaintiffs are opposed to the relief sought.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on October 20, 2021, and that all counsel of record were served by CM/ECF.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN



IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN )  
AMERICAN CITIZENS, SOUTHWEST )  
VOTER REGISTRATION EDUCATION )  
PROJECT, MI FAMILIA VOTA, )  
AMERICAN GI FORUM, LA UNION )  
DEL PUEBLO ENTERO, MEXICAN )  
AMERICAN BAR ASSOCIATION OF )  
TEXAS, TEXAS HISPANICS )  
ORGANIZED FOR POLITICAL )  
EDUCATION, WILLIAM C. )  
VELASQUEZ INSTITUTE, FIEL )  
HOUSTON INC., TEXAS )  
ASSOCIATION OF LATINO )  
ADMINISTRATORS AND )  
SUPERINTENDENTS, EMELDA )  
MENENDEZ, GILBERTO MENENDEZ, )  
JOSE OLIVARES, FLORINDA )  
CHAVEZ, and JOEY CARDENAS, )  
)  
*Plaintiffs* )  
)  
v. )  
)  
GREG ABBOTT, in his official capacity as )  
Governor of the State of Texas; JOSE A. )  
ESPARZA, in his official capacity as Deputy )  
Secretary of the State of Texas, )  
)  
*Defendants.* )  
\_\_\_\_\_ )

Case No. 3:21-cv-259

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**I.**  
**INTRODUCTION**

1. Plaintiffs are individual registered voters and a coalition of organizations that seek--on behalf of themselves and their members--declaratory and injunctive relief to enforce the

Fourteenth Amendment to the United States Constitution and the Voting Rights Act of 1965. Plaintiffs challenge the redistricting plans adopted by the Texas Legislature for the State House, State Senate, Congress and State Board of Education (“SBOE”).

2. The 2020 Census reported that Texas’s population increased by 3,999,944 since 2010. As a result, Texas is the only one of the fifty states to have been apportioned two additional seats in the U.S. House of Representatives.

3. More dramatic were the demographic changes within Texas. Over the past decade, Latinos constituted 50% of the population increase in Texas, and racial minorities comprised 95% of the population increase in Texas (including persons who identify as having more than one race).

4. According to the U.S. Census, from 2010 to 2020, the Hispanic population in Texas increased by 1.98 million, and the White Non-Hispanic (“Anglo”) population in Texas increased by 187,252.

5. Based on recent demographic trends, the Texas State Data Center estimates that the Latino population of Texas will match the Anglo population in 2021.

6. The 2020 Census also revealed that the current Texas House, Senate and congressional redistricting plans, which were ordered into effect by the court in *Perez v. Abbott*, No. 5:11-cv-00360 (W.D. Tex.) (the “*Perez* court”) and used in the 2020 General Election,<sup>1</sup> do not reflect the population shifts that occurred during the last decade and are unconstitutionally malapportioned. The SBOE redistricting plan, enacted by Texas in 2011, is also unconstitutionally malapportioned.

7. On October 15, 2021 and October 16, 2021, the 87<sup>th</sup> Texas Legislature approved

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<sup>1</sup> The current redistricting plans are also known as H2100, S2100, C2100 and E2100 and are available on the website of the Texas Legislative Council at <https://dvr.capitol.texas.gov/>.

redistricting plans for the Texas House, Senate and SBOE.<sup>2</sup> On October 17, 2021, a conference committee of the Texas House and Senate reported out a redistricting plan for Congress.

8. Plaintiffs seek a declaratory judgment that the redistricting plans for the Texas House (Plan H2316), Senate (Plan S2168), SBOE (Plan E2106) and Congress (C2193) violate their civil rights because the plans unlawfully dilute the voting strength of Latinos. Plaintiffs further seek a declaratory judgment that the challenged redistricting plans intentionally discriminate against them on the basis of race and national origin. Plaintiffs seek a permanent injunction prohibiting the calling, holding, supervising, or certifying of any future Texas House, Senate, Congressional and SBOE elections under the challenged redistricting plans. Plaintiffs further seek the creation of Texas House, Senate, Congressional and SBOE redistricting plans that will not cancel out, minimize or dilute the voting strength of Latino voters in Texas. Finally, Plaintiffs seek costs and attorney's fees.

## **II.** **JURISDICTION**

9. Jurisdiction is based upon 28 U.S.C. § 1343(3) & (4) and upon 28 U.S.C. § 1331 for causes of action arising from 52 U.S.C. §§ 10301 and 10304. Jurisdiction for Plaintiffs' claim for declaratory relief is based upon 28 U.S.C. §§ 2201 and 2202. Jurisdiction for Plaintiffs' claims under the Fourteenth Amendment to the U.S. Constitution is based upon 42 U.S.C. § 1983 and 28 U.S.C. § 1331. Jurisdiction for Plaintiffs' claim for costs and attorney's fees is based upon 42 U.S.C. § 1988 and 52 U.S.C. § 10310(e). Venue is proper in this Court under 28 U.S.C. 1391(b)

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<sup>2</sup> The redistricting plans passed by the 87<sup>th</sup> Texas Legislature on October 15 and 16, 2021 are known as H2316, S2168 and E2106 and are available on the website of the Texas Legislative Council at <https://dvr.capitol.texas.gov/>. The congressional redistricting plan reported out of conference committee on October 17, 2021 is known as C2193 and is available on the website of the Texas Legislative Council at <https://dvr.capitol.texas.gov/>.

(2) because a substantial part of the events and omissions giving rise to the claims in this case occurred in the Western District of Texas and in El Paso County.

### **III.** **PLAINTIFFS**

10. The plaintiff organizations in this case are members of the Texas Latino Redistricting Task Force, an unincorporated association of individuals and organizations committed to securing fair redistricting plans for Texas.

11. Plaintiff LEAGUE OF UNITED LATIN AMERICAN CITIZENS (“LULAC”) is a national organization that works to advance the economic condition, educational attainment, political influence, housing, health and civil rights of Hispanic Americans through community-based programs operating at more than 1,000 LULAC councils nationwide. LULAC is a membership organization, and members of LULAC reside throughout Texas. LULAC members in Texas include: Latino registered voters of Texas who are injured by the dilution of Latino voting strength statewide, and Latino registered voters of Texas who reside in districts that are overpopulated relative to other districts in the state and also districts whose boundaries dilute Latino voting strength.

12. Plaintiff SOUTHWEST VOTER REGISTRATION EDUCATION PROJECT (“SVREP”) is a non-profit and non-partisan organization committed to promoting and increasing the participation of Latinos and other minority communities in the democratic process through voter registration, voter education and voter participation activities. SVREP conducts its activities with, among others: Latino registered voters of Texas who are injured by the dilution of Latino voting strength statewide, and Latino registered voters of Texas who reside in districts that are overpopulated relative to other districts in the state and also districts whose boundaries dilute Latino voting strength.

13. Plaintiff MI FAMILIA VOTA is a national civic engagement organization that unites Latino, immigrant and allied communities to promote social and economic justice through citizenship workshops, voter registration and voter participation. MI FAMILIA VOTA conducts its activities with, among others: Latino registered voters of Texas who are injured by the dilution of Latino voting strength statewide, and Latino registered voters of Texas who reside in districts that are overpopulated relative to other districts in the state and also districts whose boundaries dilute Latino voting strength.

14. Plaintiff AMERICAN GI FORUM (“GI FORUM”) is a veterans organization dedicated to addressing problems of discrimination and inequities endured by Hispanic veterans. GI FORUM is a membership organization, and members of GI FORUM reside throughout Texas. Members of GI FORUM in Texas include: Latino registered voters of Texas who are injured by the dilution of Latino voting strength statewide, and Latino registered voters of Texas who reside in districts that are overpopulated relative to other districts in the state and also districts whose boundaries dilute Latino voting strength.

15. Plaintiff LA UNIÓN DEL PUEBLO ENTERO (“LUPE”) is a non-partisan membership organization founded by labor rights activists César Chávez and Dolores Huerta. LUPE’s mission is to build strong, healthy communities in the Texas Rio Grande Valley through community organizing and civic engagement. LUPE is a membership organization, and members of LUPE reside primarily in the Rio Grande Valley of Texas. Members of LUPE include: Latino registered voters of Texas who are injured by the dilution of Latino voting strength statewide, and Latino registered voters of Texas who reside in districts that are overpopulated relative to other districts in the state and also districts whose boundaries dilute Latino voting strength.

16. Plaintiff MEXICAN AMERICAN BAR ASSOCIATION OF TEXAS (“MABA-TX”) is a

professional association of Latino lawyers located in Texas. The goals of MABA-TX include: to speak on behalf of the Latino community on legal issues affecting the community; to serve the Latino populace as a professional association by providing services, assistance and advice on matters of legal concern to the community; to preserve high standards of integrity, honor and professional courtesy among Latino lawyers; and utilize legislation, advocacy and education to accomplish these goals. MABA-TX is a membership organization, and members of MABA-TX reside throughout Texas. Members of MABA-TX include: Latino registered voters of Texas who are injured by the dilution of Latino voting strength statewide, and Latino registered voters of Texas who reside in districts that are overpopulated relative to other districts in the state and also districts whose boundaries dilute Latino voting strength.

17. Plaintiff TEXAS HISPANICS ORGANIZED FOR POLITICAL EDUCATION (“TEXAS HOPE”) is a non-profit organization that seeks to empower Latinos in Texas through civil engagement, civic education and outreach. TEXAS HOPE’s activities include voter registration of Latino citizens, Get-Out-The-Vote activities, poll watcher service, administering voter education workshops and legislative advocacy on issues important to the Latino community, including education, voting rights, immigrants’ rights, healthcare and housing. TEXAS HOPE is a membership organization, and members of TEXAS HOPE reside throughout Texas. Members of TEXAS HOPE include: Latino registered voters of Texas who are injured by the dilution of Latino voting strength statewide, and Latino registered voters of Texas who reside in districts that are overpopulated relative to other districts in the state and also districts whose boundaries dilute Latino voting strength.

18. Plaintiff WILLIAM C. VELASQUEZ INSTITUTE (“WCVI”) is a non-profit and non-partisan public policy analysis organization that conducts research to improve the level of political

and economic participation in Latino and other underrepresented communities. WCVI uses its research to provide information relevant to the needs of its constituents to Latino community leaders, including political behavior and opinions of Latinos and the impact of public policies on Latinos. WCVI serves with its research and analysis, among others: Latino registered voters of Texas who are injured by the dilution of Latino voting strength statewide, and Latino registered voters of Texas who reside in districts that are overpopulated relative to other districts in the state and also districts whose boundaries dilute Latino voting strength.

19. Plaintiff FIEL Houston Inc. (“FIEL”) is a non-profit, non-partisan membership organization in Houston, Texas. FIEL is an immigrant-led organization that advocates for just laws for immigrant youth and their families, including access to higher education for all people regardless of immigration status and access to justice for the community. FIEL believes in the American Dream as a fundamental principle on which they can build and better the lives of all people in the United States. FIEL believes in social justice and in civic participation to make things happen. FIEL is a membership organization, and members of FIEL reside primarily in Houston, Texas. FIEL members include: Latino registered voters of Texas who are injured by the dilution of Latino voting strength statewide, and Latino registered voters of Texas who reside in districts that are overpopulated relative to other districts in the state and also districts whose boundaries dilute Latino voting strength.

20. Plaintiff TEXAS ASSOCIATION OF LATINO ADMINISTRATORS AND SUPERINTENDENTS (“TALAS”) is a non-profit organization that advocates for Latino learners’ and leaders’ growth and advancement in Texas. TALAS provides leadership development, collective impact, advocacy and a proactive voice for Latino and non-Latino leaders passionate about serving the fastest-growing student population in Texas. TALAS is a membership

organization, and members of TALAS reside throughout Texas. Members of TALAS in Texas include: Latino registered voters of Texas who are injured by the dilution of Latino voting strength statewide, and Latino registered voters of Texas who reside in districts that are overpopulated relative to other districts in the state and also districts whose boundaries dilute Latino voting strength.

21. Plaintiff Emelda Menendez is Latina and a registered voter of Texas. She resides in San Antonio, Texas. In Plans H2316, S2168, C2193 and E2106, Plaintiff E. Menendez resides in Texas House District 120, Senate District 19, Congressional District 28 and SBOE District 2.

22. Plaintiff Gilberto Menendez is Latino and a registered voter of Texas. He resides in San Antonio, Texas. In Plans H2316, S2168, C2193 and E2106, Plaintiff G. Menendez resides in Texas House District 120, Senate District 19, Congressional District 28 and SBOE District 2.

23. Plaintiff Jose Olivares is Latino and a registered voter of Texas. He resides in Corpus Christi, Texas. In Plans H2316, S2168, C2193 and E2106, Plaintiff Olivares resides in Texas House District 49, Senate District 27, Congressional District 27 and SBOE District 2.

24. Plaintiff Florinda Chavez is Latina and a registered voter of Texas. She resides in Austin, Texas. In Plans H2316, S2168, C2193 and E2106, Plaintiff Chavez resides in Texas House District 49, Senate District 21, Congressional District 37 and SBOE District 5.

25. Plaintiff Joey Cardenas is Latino and a registered voter of Texas. He resides in Louise, Texas. In Plans H2316, S2168, C2193 and E2106, Plaintiff Cardenas resides in Texas House District 85, Senate District 17, Congressional District 22 and SBOE District 2.

26. The dilution of Latino voting strength statewide in Plans H2316, S2168, C2193 and E2106 has injured all plaintiffs, including members of plaintiff organizations. The dilution of Latino voting strength in individual districts in Plans H2316, S2168, C2193 and E2106 has injured

plaintiffs who reside and vote in those individual districts, including members of plaintiff organizations.

27. In addition to being malapportioned, the redistricting maps currently in effect for the Texas House, Senate, congressional and SBOE districts injure all plaintiffs by diluting Latino voting strength. If the 2022 elections are held under the redistricting maps currently in place, Plaintiffs will be injured by having their votes diluted by malapportionment.

#### **IV. DEFENDANTS**

28. Defendant GREGORY W. (“Greg”) ABBOTT is the Governor of Texas, and pursuant to Article IV, Section I of the Texas Constitution, is the chief executive officer of the State of Texas. He is sued in his official capacity.

29. Defendant JOSE A. ESPARZA is the Deputy Secretary of State of Texas. Because the Office of the Secretary of State of Texas is currently vacant, Esparza, in his official capacity, is currently responsible for overseeing the conduct of elections within Texas.<sup>3</sup> He is sued in his official capacity.

#### **V. FACTS**

##### **A. Background**

30. On March 12, 2020, the U.S. Census Bureau commenced the 2020 Census. The following day, President Donald J. Trump declared the global pandemic COVID-19 a national emergency. As a result of the COVID-19 pandemic, the Census Bureau suspended field operations until July 2020. Despite U.S. Commerce Department Secretary Wilbur Ross’s initial support of an extension, the Census Bureau ended its door-to-door operations on October 15, 2020.

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<sup>3</sup> Tex. Elec. Code § 31.001(a); Tex. Gov’t Code § 405.004.

31. On April 26, 2021, the U.S. Secretary of Commerce delivered the 2020 Census state population counts to the President for the purpose of apportioning the seats in the U.S. House of Representatives.<sup>4</sup> On August 12, 2021, the U.S. Secretary of Commerce published the Texas redistricting data file.<sup>5</sup>

32. The U.S. Secretary of Commerce released the Texas redistricting data more than ten weeks after the Texas Legislature's 87<sup>th</sup> Regular Session adjourned *sine die* on May 31, 2021. The redistricting data revealed that the Texas House, Senate, congressional and SBOE districts used in the 2020 election were malapportioned and needed to be redrawn.

33. On September 7, 2021, Defendant Abbott called a special session of the Texas Legislature to address redistricting. That special session began on September 20, 2021. Following a highly compressed legislative process characterized by departures from normal procedure and substantive considerations, on October 15 and 16, 2021, the Legislature passed redistricting plans for the Texas House (Plan H2316), Senate (Plan S2168) and SBOE (Plan E2106); on October 17, 2021, a conference committee of the Texas House and Senate reported out a redistricting plan for Congress (Plan C2193).

#### **B. Texas's 2020 House, Senate, Congressional and SBOE Maps**

34. Texas's congressional and state legislative maps used in the 2020 election were drawn to remedy findings of minority vote dilution in the previous redistricting cycle. *See Abbott v. Perez*, 138 S. Ct. 2305, 2316–17, 2330 (2018).

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<sup>4</sup> U.S. Census Bureau, "2020 Census Apportionment Results Delivered to the President," available at <https://www.census.gov/newsroom/press-releases/2021/2020-census-apportionment-results.html> (last visited October 14, 2021).

<sup>5</sup> U.S. Census Bureau, "2020 Census Statistics Highlight Local Population Changes and Nation's Racial and Ethnic Diversity- U.S. Census Bureau Delivers Data for States to Begin Redistricting Efforts," available at <https://www.census.gov/newsroom/press-releases/2021/population-changes-nations-diversity.html> (last visited October 14, 2021).

35. In 2011, Texas enacted Texas House, Senate and SBOE redistricting plans during the 82<sup>nd</sup> Legislature's regular session. In a subsequent special session that same year, the Legislature adopted a congressional redistricting plan. At that time, Texas was required to obtain preclearance under Section 5 of the Voting Rights Act of 1965 before it could implement its redistricting plans; only the enacted SBOE redistricting plan received preclearance and went into effect for the 2012 election.

36. When Texas failed to secure preclearance for its House, Senate and congressional redistricting plans, the *Perez* court created interim maps for the 2012 election. In those maps, the *Perez* court redrew certain districts pursuant to instructions from the U.S. Supreme Court. Both the congressional remedial plan and the plan for the Texas House departed significantly from the State's 2011 plans. At least 8 of the 36 congressional districts and 21 districts in the plan for the Texas House were changed. *Id.* at 2316. In 2017, following trial, the *Perez* court concluded that the 2011 State House and congressional plans unlawfully diluted minority voting strength and intentionally discriminated against minority voters.

37. In 2013, Texas enacted the Court's interim remedial plans, with some changes to the Texas House plan. Following another trial, the *Perez* court concluded that one of those changes by Texas, to House District 90, was an unconstitutional racial gerrymander. The U.S. Supreme Court affirmed that ruling, *id.* at 2334–35, and the *Perez* court redrew House District 90 in May 2019 to remedy the constitutional violation.

38. Thus, as recently as 2019, a federal court redrew Texas district boundaries to cure racial discrimination. Nevertheless, history repeated itself in the Texas Legislature in 2021.

### **C. Results of the 2020 Census**

39. According to the 2020 Census, the total population of Texas is 29,145,505. That figure

represents a significant increase from a decade ago, when the 2010 Census reported a total population of 25,145,561. Texas experienced the third-largest percent increase in the population of any state in the United States, and it is the only state to gain two congressional seats in the 2020 congressional apportionment. Beginning with the 2022 election, Texas voters will elect 38 members to the United States House of Representatives.

40. According to the 2020 Census, the Latino population of Texas is 11,441,717. Latinos constituted 50% of the total population growth in Texas between 2010 and 2020. Latinos are now 39.3% of Texas's population, and Anglos are now 39.7% of the state's population (a decrease from 45.3% a decade ago). The Latino citizen voting age population of Texas is 30% of the total citizen voting age population.

41. The pattern of strong Latino population growth relative to Anglo population growth was consistent across the state: in Bexar County, the Latino population increased by 184,000, and the Anglo population increased by only 16,609; in Dallas County, the Latino population increased by 151,895, and the Anglo population decreased by 59,706; and in Harris County, the Latino population increased by 363,169, and the Anglo population decreased by 40,053.

42. In the new redistricting maps, the ideal population is: 194,303 for a State House district; 940,178 for a State Senate district; 766,987 for a congressional district; and 1,943,034 for an SBOE district.

**D. The Legislature adopts new redistricting plans during a special session called by Defendant Abbott.**

43. The Texas Legislature convened its 87<sup>th</sup> Regular Session on January 12, 2021, and adjourned *sine die* on May 31, 2021. The Legislature did not enact redistricting plans during this time because the Census Bureau had not yet released the redistricting data file for Texas.

44. The U.S. Secretary of Commerce published the redistricting data file for Texas on August

12, 2021, more than ten weeks after the Legislature's 87<sup>th</sup> Regular Session.

45. On August 31, 2021, in its second special session, the 87<sup>th</sup> Texas Legislature passed Senate Bill 1, a controversial new law that prohibits certain voting methods adopted during the COVID-19 pandemic (such as 24-hour and drive-thru voting), increases requirements for assisting limited English proficient and disabled voters, and prohibits certain assistance to mail voters.

46. On September 7, 2021, Defendant Abbott announced a third special session of the 87<sup>th</sup> Texas Legislature to address redistricting. The third special session began on September 20, 2021.

#### **Texas House Plan**

47. On September 30, 2021, Texas Representative Todd Hunter filed House Bill 1, a redistricting plan for the Texas House. The presiding officer referred the bill to the House Redistricting Committee the same day.

48. After the committee held a public hearing on House Bill 1 on October 4, 2021, the next day Representative Hunter introduced a committee substitute for the bill, and the committee voted out the bill the same day. The committee did not hold a hearing on the substitute bill before voting it out of committee; as a result, there was no opportunity for public testimony on the substitute bill.

49. On October 12, 2021, the full House heard House Bill 1 on second reading. On October 13, 2021, the Texas House passed House Bill 1 on the third reading and reported the bill to the Senate. On October 15, 2021, the Senate Special Committee on Redistricting held a public hearing on House Bill 1 and voted the bill out of committee. The full Senate passed House Bill 1 that same day and adopted Plan H2316.

#### **Texas Senate and SBOE Plans**

50. On September 18, 2021, Texas Senator Joan Huffman filed Senate Bill 4, a redistricting

plan for the Texas Senate.

51. On September 20, 2021, Senator Huffman filed Senate Bill 7, a redistricting plan for the SBOE. That same day, the lieutenant governor referred Senate Bills 4 and 7 to the Senate Special Committee on Redistricting, and the committee issued a hearing notice for both bills for September 24, 2021.

52. However, the evening before the committee held its hearing, Senator Huffman filed a committee substitute for Senate Bill 4. As a result, most witnesses were deprived of the opportunity to analyze the committee substitute and modify their testimony before the hearing the following day.

53. On September 24 and 25, 2021, the Senate Special Committee on Redistricting held a public hearing on both bills. The committee voted out both bills on September 28, 2021.

54. On October 4, 2021, the Texas Senate passed both bills.

55. On October 11, 2021, the House Redistricting Committee held a public hearing on both bills, and that same day, the committee voted out both bills. On October 15, 2021, the full House passed Senate Bills 4 and 7, adopting Plans S2168 and E2106, respectively.

### **Congressional Plan**

56. On September 27, 2021, Senator Huffman filed Senate Bill 6, a redistricting plan for congressional districts, and the lieutenant governor referred the bill to the Senate Special Committee on Redistricting.

57. On September 30, 2021, the Senate Special Committee on Redistricting held a public hearing on Senate Bill 6 and left it pending. On October 4, 2021, the Senate Special Committee on Redistricting held a public hearing on committee amendments for Senate Bill 6 and voted out

a committee substitute. On October 8, 2021, the full Senate passed Senate Bill 6. That same day, the House received the bill, and the presiding officer referred it to the House Redistricting Committee.

58. On October 13, 2021, the House Redistricting Committee held a public hearing on the bill and voted it out that same day.

59. On October 16, 2021, the full House adopted several amendments to Senate Bill 6 and passed the bill on the second reading.

60. On October 17, 2021, the House passed the amended version of Senate Bill 6 on the third reading, and the Senate refused to concur with the amendments. That same day, Senate Bill 6 was referred to a conference committee, and the Senate and House appointed conferees.

61. On October 17, 2021, the Senate and House conference committee met and reported out Plan C2193.

**E. The Legislature departed from its normal procedures and failed to consider substantive factors important in redistricting.**

62. The 87<sup>th</sup> Texas Legislature's adoption of Plans H2316, S2168, C2193 and E2106 included departures from normal procedures and departures from substantive considerations usually considered important by the Legislature in redistricting.

63. For example, both the Texas House Redistricting Committee and the Senate Special Committee on Redistricting offered little advance notice of their hearings on the redistricting bills. On the night before the hearing of the Senate Special Committee on Redistricting on the proposed Senate map, Senator Huffman, the Senate Redistricting Committee Chair, released a committee substitute for Senate Bill 4, and the next day the committee held a hearing on the committee substitute. The House Redistricting Committee held a public hearing on the Texas House redistricting map on October 4, 2021 but on October 5, 2021, Representative Hunter, the House

Redistricting Committee Chair, introduced a committee substitute for House Bill 1 and took no public testimony. The committee voted out the committee substitute within 15 minutes. On October 12, 2021, the House Redistricting Committee provided only 24-hour notice for a public hearing on the proposed congressional redistricting map and allowed only 12 hours for the public to register for virtual testimony. On October 16, 2021, the full House adopted several amendments to the proposed congressional redistricting map and provided no opportunity for public input on the amendments.

64. Statements from the House and Senate committee chairs reveal departures from the normal and required substantive standards during the redistricting process. For example, Senator Joan Huffman, who authored the State Senate and SBOE maps and chairs the Senate Redistricting Committee, told lawmakers and the public that the maps were “drawn blind to race.”<sup>6</sup>

65. Similarly, State Representative Todd Hunter, who authored the State House map and chairs the House Redistricting Committee, told lawmakers and the public that the House map created and evaluated majority-minority districts based on voting age population, instead of citizen voting age population, because citizen voting age population data is “not the same [as those] based on census numbers.”<sup>7</sup>

66. Throughout the process, members of the Legislature, civil rights advocates and community members warned the legislative leadership that the proposed plans violated minority voting rights but the Legislature did not cure the identified deficiencies.

### **Texas House Plan**

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<sup>6</sup> Associated Press, “Texas GOP advances new maps that would tighten slipping grip,” October 17, 2021, available at <https://apnews.com/article/austin-texas-race-and-ethnicity-racial-injustice-elections-4a40e921b8cec9449e24ed5adc637d87>

<sup>7</sup> Texas Tribune, “Texas House committee advances proposed map for lower chamber,” October 5, 2021, available at <https://www.texastribune.org/2021/10/05/texas-house-redistricting-committee-map/>

67. During its hearing on October 4, 2021, the Texas House Redistricting Committee failed to allow any invited testimony, which provides an opportunity for a legislative committee to hear from experts in the field. Additionally, at the beginning of the hearing, Committee Chair Representative Todd Hunter announced that the committee would vote the bill out at the end of the hearing, which foreclosed any possibility that the committee would reevaluate the plan or make changes based on witness testimony.

68. Chair Hunter also limited his bill layout for House Bill 1 to one hour and did not allow committee members to ask him questions during the bill layout. Instead, Chair Hunter told committee members that they could submit written questions to him and that he would respond to them either after the hearing or on the House floor.

69. On October 5, 2021, the House Redistricting Committee reconvened for 15 minutes. During that time, Chair Hunter introduced a committee substitute for House Bill 1 but did not allow any testimony. The committee voted out the substitute bill at the end of the hearing.

70. On October 13, 2021, the House passed House Bill 1. The House sent the bill to the Senate that same day, and the lieutenant governor referred the bill to the Senate Special Committee on Redistricting. On October 15, 2021, the Senate Special Committee on Redistricting held a public hearing on House Bill 1. The hearing lasted less than one hour, and the committee voted out the bill at the end of the hearing.

71. The Senate then suspended a rule for the regular order of business, voting out House Bill 1 the same day.

### **Texas Senate and SBOE Plans**

72. On September 20, 2021, the Senate Special Committee on Redistricting issued a hearing notice for Senate Bills 4 and 7, setting a hearing on both bills for September 24, 2021.

73. Senator Huffman filed a substitute for Senate Bill 4 on September 23, 2021, the night before the hearing.

74. On September 24 and 25, 2021, the Senate Special Committee on Redistricting held a public hearing on Senate Bill 7 and the committee substitute for Senate Bill 4. The committee voted out both bills on September 28, 2021.

75. On October 4, 2021, the full Senate voted to suspend the printing rule for Senate Bills 4 and 7. That same day, the Senate passed both bills on the second and third readings.

76. On October 11, 2021, the House Redistricting Committee held a public hearing on Senate Bills 4 and 7. The committee did not allow for invited testimony on either bill during the hearing, and Committee Chair Hunter limited his bill layout time for each bill to 30 minutes. At the beginning of the hearing, Chair Hunter announced that the committee would vote out both bills at the end of the hearing, and any introduced committee amendments would occur during the hearing.

77. Chair Hunter's announcements changed normal procedure. Typically, committees do not hear and vote on bills on the same day, and votes for introduced amendments are set for a later time. The normal procedure gives the committee members sufficient time to review the amendments before voting on them and the bill. Thus, because of these changes in procedures, committee members and the public lacked time to review sufficiently the bills and any proposed amendments.

78. That same day, the committee voted out both bills.

### **Congressional Plan**

79. On October 12, 2021, the House Redistricting Committee issued a notice for a public hearing on Senate Bill 6, setting the hearing for the very next day. The committee thus gave only 24 hours notice of the hearing. The committee also provided only 12 hours for the public to register

to give virtual testimony at the hearing.

80. At the public hearing on October 13, 2021, Chair Hunter limited the bill layout to just one hour. At the beginning of the hearing, Chair Hunter announced that the committee would vote out the bill at the end of the hearing and that it would not consider committee amendments until after public testimony. The committee did not allow invited testimony. That same day, the committee voted out the bill.

**F. The Newly Adopted Maps Dilute the Voting Strength of Latinos**

81. Latinos in Texas--including the areas in which Latino-majority Texas House, Texas Senate, congressional and SBOE districts can be created--are politically cohesive.

82. Anglos in Texas vote sufficiently as a bloc to enable them--in the absence of special circumstances, such as a Latino candidate running unopposed-- usually to defeat the Latino voters' preferred candidates, including the areas in which Latino majority Texas House, Texas Senate, congressional and SBOE districts can be created.

83. Plans H2316, S2168, C2193 and E2106 interact with social and historical conditions to cause an inequality in the opportunity of Latino voters to elect representatives of their choice as compared to Anglo voters. Because these factors are present, Plans H2316, S2168, C2193 and E2106 have the effect of diluting Latino voting strength statewide and in specific districts.

84. Plans H2316, S2168, C2193 and E2106 also discriminate against Latino voters statewide, and in specific districts, by intentionally manipulating district boundaries to reduce Latino voting strength and by making improper and excessive use of race in redistricting.

**Texas House Representatives Plan**

85. In the current (also referred to herein as the "benchmark") House plan, which contains 150 House districts, 33 districts contain a majority Latino citizen voting age population ("CVAP").

86. Newly-adopted Plan H2316 reduces the number of Latino CVAP majority districts. In Plan H2316, 30 House districts contain a majority Latino CVAP.

87. The Latino population of Texas is sufficiently numerous and geographically compact to constitute the majority of the CVAP in more than 30 Texas House districts.

88. For example, although the Harris County Latino population has increased by 363,169 people over the past decade, Plan H2316 fails to add any Latino majority House district there.

89. Despite the dramatic growth of the Latino population in Texas since 2010, the failure of Plan H2316 to create at least one additional Latino majority House district statewide means that Latinos have lost voting strength in Texas.

90. In addition to failing to create additional Latino majority districts to reflect Latino population growth in Texas, Plan H2316 weakens existing Latino majority districts. For example, Plan H2316 moves House District 76--currently a Latino majority district--from El Paso County to Fort Bend County. In doing so, Plan H2316 reduces the Latino CVAP to well below 50% in House District 76.

91. Plan H2316 also weakens Latino voting strength in House District 118 in Bexar County while simultaneously increasing Latino voting strength in nearby House Districts 117 and 124, two existing Latino opportunity districts in the county. Plan H2316 weakens House District 118 by manipulating population into and out of House District 117, 118 and 124 based on race.

92. Plan H2316 also creates a total, or “top to bottom,” deviation of 9.98% by overpopulating Latino majority districts and underpopulating Anglo majority districts to avoid drawing new Latino majority districts. The systematic overpopulation of Latino majority districts dilutes Latino voting strength in the State House plan.

### **Texas Senate Plan**

93. The benchmark Senate plan contains 31 Senate districts, seven of which contain a majority Latino CVAP. Plan S2168 maintains the same number of Senate districts that contain a majority Latino CVAP.

94. The Latino population of Texas is sufficiently numerous and geographically compact to comprise the majority of the CVAP in at least 9 Senate districts.

95. Despite the dramatic growth of the Latino population in Texas since 2010, the failure of Plan S2168 to create additional Latino majority Senate districts means that Latinos have lost voting strength in Texas.

### **SBOE Plan**

96. The benchmark SBOE plan contains 15 SBOE districts, three of which contain a majority Latino CVAP. Plan E2106 maintains the same number of SBOE districts with a majority Latino CVAP.

97. The Latino population of Texas is sufficiently numerous and geographically compact to comprise the majority of the CVAP in at least 4 SBOE districts.

98. Despite the dramatic growth of the Latino population in Texas since 2010, the failure of Plan E2106 to create an additional Latino majority SBOE district means that Latinos have lost voting strength in Texas.

99. Additionally, Plan E2106 weakens Latino voting strength in SBOE District 3--a district in South Texas--by manipulating precincts into and out of SBOE District 3 based on race.

### **Congressional Plan**

100. The benchmark congressional plan contains a total of 36 congressional districts, eight of which contain a majority Latino CVAP. Plan C2193 contains a total of 38 congressional districts, seven of which contain a majority Latino citizen voting age population.

101. The significant growth of the Latino population in Texas since 2010 allowed Texas to gain one, if not both, of its two new congressional districts. Despite the growth of the Latino population over the past decade, Plan C2193 dilutes Latino voting strength by failing to create any additional Latino CVAP majority congressional districts.

102. The Latino population of Texas is sufficiently numerous and geographically compact to comprise the majority of the CVAP in at least two additional congressional districts.

103. In addition to failing to create additional Latino majority districts to reflect Latino population growth in Texas, C2193 weakens existing Latino majority districts.

104. For example, in South Texas, Plan C2193 weakens Latino voting strength in Congressional District 15 by intentionally “packing” Latino voters into neighboring Congressional District 34. Plan C2193 also weakens the Latino voting strength in Congressional District 23. Defendants accomplish the weakening of both districts by manipulating precincts into and out of the districts based on race.

**VI.**  
**CAUSES OF ACTION**

**COUNT 1**

*Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution  
(racial discrimination)*

105. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

106. Texas House Plan H2316, Senate Plan S2168, Congressional Plan C2193 and SBOE Plan E2106 discriminate against Plaintiffs on the basis of race and national origin in violation of the 14th Amendment to the U.S. Constitution.

**COUNT 2**

*Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution  
(unconstitutional population deviations)*

107. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

108. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution “requires that the seats in both houses of a bicameral state legislature [] be apportioned on a population basis.” *Reynolds v. Sims*, 377 U.S. 533, 568 (1964).

109. In light of the significant population shifts that have occurred in Texas since the 2010 Census, Texas’s current State House (H2100), State Senate (S2100), congressional (C2100) and SBOE (E2100) redistricting plans – which were drawn based on 2010 Census data – are unconstitutionally malapportioned. Any future use of Texas’s current state legislative, congressional and SBOE redistricting plans would violate the Plaintiffs’ constitutional right to an undiluted vote.

110. In addition, the Texas House Plan H2316 has a total or “top to bottom” deviation of 9.98%. Defendants achieved this deviation by overpopulating Latino majority districts and underpopulating Anglo majority districts to avoid drawing new Latino majority districts and minimize Latino voters’ opportunity to participate in the political process. There is no legal justification for maintaining a deviation of 9.98% when it has such an adverse impact on Latino voting strength. This 9.98% deviation violates the one person, one vote principle of the Fourteenth Amendment of the United States Constitution.

### **COUNT 3**

#### *Section 2 of the Voting Rights Act*

111. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

112. Texas House Plan H2316, Senate Plan S2168, Congressional Plan C2193 and SBOE Plan E2106 result in a denial or abridgment of the right to vote of individual plaintiffs and organizational plaintiffs’ members on account of their race, color or ethnicity by having the intent and effect of

canceling out or minimizing their voting strength as Latinos in Texas. Texas House Plan H2316, Senate Plan S2168, Congressional Plan C2193 and SBOE Plan E2106 do not afford individual plaintiffs and organizational plaintiffs' members an equal opportunity to participate in the political process and to elect representatives of their choice, and deny individual plaintiffs and organizational plaintiffs' members the right to vote in elections without distinction of race, color or previous condition of servitude in violation of 52 U.S.C. §§ 10301 and 10304.

**VII.**  
**REQUEST FOR THREE JUDGE COURT**

113. Plaintiffs request a three-judge trial court pursuant to 28 U.S.C. § 2284.

**VIII.**  
**ATTORNEY'S FEES**

114. In accordance with 42 U.S.C. § 1988 and 52 U.S.C. § 10310(e), Plaintiffs are entitled to recover reasonable attorney's fees, expenses and costs.

**IX.**  
**PRAYER**

115. WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that this Court:

- (a) assume jurisdiction of this action and request a three-judge panel pursuant to 28 U.S.C. § 2284;
- (b) issue a declaratory judgment finding that the Texas House Plan H2316, Senate Plan S2168, Congressional Plan C2193 and SBOE Plan E2106 illegally and unconstitutionally dilute the voting strength of Latino voters in Texas and are unlawful, null and void;
- (c) issue a declaratory judgment finding that the Texas House Plan H2100, Senate Plan S2100, Congressional Plan C2100 and SBOE Plan E2100 are unconstitutionally malapportioned and cannot be used for future elections;
- (d) permanently enjoin Defendants from calling, holding, supervising or certifying any

elections under Texas House Plan H2316, Senate Plan S2168, Congressional Plan C2193 and SBOE Plan E2106. Plaintiffs have no adequate remedy at law other than the judicial relief sought herein, and unless the Defendants are enjoined from using Texas House Plan H2316, Senate Plan S2168, Congressional Plan C2193 and SBOE Plan E2106, individual plaintiffs and organizational plaintiffs' members will be irreparably harmed by the continued violation of their statutory and constitutional rights;

(e) set a reasonable deadline for state authorities to enact or adopt redistricting plans for Texas House, Senate, Congress and SBOE that do not dilute, cancel out or minimize the voting strength of Latino voters;

(f) if state authorities fail to enact or adopt valid redistricting plans by the Court's deadline, order new redistricting plans for Texas House, Senate, Congress and SBOE that do not dilute, cancel out or minimize the voting strength of Latino voters;

(g) adjudge all costs against Defendants, including reasonable attorney's fees;

(h) retain jurisdiction to render any and all further orders that this Court may; and

(i) grant any and all further relief to which Plaintiffs may show themselves to be entitled.

DATED: October 18, 2021

Respectfully submitted,

MEXICAN AMERICAN LEGAL DEFENSE  
AND EDUCATIONAL FUND

/s/ Nina Perales

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forthcoming

**Certificate of Service**

The undersigned counsel hereby certifies that she has electronically submitted for filing a true and correct copy of the above and foregoing in accordance with the Electronic Case Files System of the Western District of Texas on the 18th day of October 2021.

/s/ Nina Perales  
Nina Perales



DATE: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE