

**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.* )

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CIVIL ACTION NO.  
11-CA-360-OLG-JES-XR  
[Lead case]

MEXICAN AMERICAN LEGISLATIVE )  
CAUCUS, TEXAS HOUSE OF )  
REPRESENTATIVES, )  
*Plaintiffs,* )  
v. )  
STATE OF TEXAS, et al., )  
*Defendants.* )

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CIVIL ACTION NO.  
SA-11-CA-361-OLG-JES-XR  
[Consolidated case]

TEXAS LATINO REDISTRICTING TASK )  
FORCE, et al., )  
*Plaintiffs,* )  
v. )  
RICK PERRY, )  
*Defendant.* )

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CIVIL ACTION NO.  
SA-11-CA-490-OLG-JES-XR  
[Consolidated case]

MARGARITA V. QUESADA, et al., )  
*Plaintiffs,* )  
v. )  
RICK PERRY, et al., )  
*Defendants.* )

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CIVIL ACTION NO.  
SA-11-CA-592-OLG-JES-XR  
[Consolidated case]

JOHN T. MORRIS, )  
*Plaintiff,* )  
v. )  
STATE OF TEXAS, et al., )  
*Defendants.* )

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CIVIL ACTION NO.  
SA-11-CA-615-OLG-JES-XR  
[Consolidated case]

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EDDIE RODRIGUEZ, et al., )  
*Plaintiffs,* )  
v. )  
RICK PERRY, et al., )  
*Defendants.* )

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CIVIL ACTION NO.  
SA-11-CA-635-OLG-JES-XR  
[Consolidated case]

**DEFENDANTS RICK PERRY, DAVID DEWHURST, JOE STRAUS,  
HOPE ANDRADE, AND THE STATE OF TEXAS’S  
ANSWER AND DEFENSES TO PLAINTIFFS’ FIRST AMENDED COMPLAINT**

Defendants Rick Perry, in his official capacity as Governor, David Dewhurst, in his official capacity as Lieutenant Governor, Joe Straus, in his official capacity as Speaker of the Texas House of Representatives, Hope Andrade, in her official capacity as Texas Secretary of State, and the State of Texas (collectively, “Defendants”) file their Answer and Defenses to the First Amended Complaint of Plaintiffs Eddie Rodriguez, Milton Gerard Washington, Bruce Elfant, Balakumar Pandian, Alex Serna, Sandra Serna, Betty F. Lopez, David Gonzalez, Beatrice Saloma, Lionor Sorola-Pohlman, Eliza Alvarado, Juanita Valdez-Cox, Josey Martinez, Nina Jo Baker, Travis County, and the City of Austin (collectively “Plaintiffs” or the “Rodriguez Plaintiffs”), and respectfully show the Court the following:

**ANSWER TO PLAINTIFFS’ FIRST AMENDED COMPLAINT**

Titles or headings contained in Plaintiffs’ First Amended Complaint are reproduced in this Answer for organizational purposes only, and Defendants do not admit any matter contained therein.

**Introduction**

1. Defendants admit that the 82nd Texas Legislature passed a congressional redistricting plan in Senate Bill 4 in its first called session. Defendants admit that congressional redistricting plan contained in Senate Bill 4 is known as Plan C185. Defendants admit that the governor signed the congressional redistricting legislation into law on July 18, 2011. Defendants

admit that plaintiffs allege violations of law and seek relief from the Court with respect to Plan C185, but Defendants deny that Plaintiffs' legal claims are valid or that they are entitled to relief from the Court.

### **Parties**

2. Defendants admit that the listed plaintiffs have sued in their personal capacities, but Defendants are without knowledge or information sufficient to form a belief about the truth of the allegation that the plaintiffs are registered voters in the State of Texas.

- a. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph.
- b. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph.
- c. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph.
- d. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph.
- e. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph.
- f. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph.
- g. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph.
- h. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph.

- i. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph.
  - j. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph.
  - k. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph.
  - l. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph.
  - m. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph.
3. Defendants admit that the 2010 Census reported Travis County's population as 1,024,266 and that this exceeds the ideal population size for a congressional district by 325,778. The remaining allegations in paragraph 3 of Plaintiffs' First Amended Complaint state legal conclusions, which need not be admitted or denied, but to the extent they require admission or denial, Defendants admit that Travis County is a political subdivision of the State of Texas with responsibility for the conduct of elections as delegated or assigned by the Legislature, and Defendants are without knowledge or information sufficient to determine the truth of the allegations that "many residents" of Travis County share "similar concerns" or that Travis County "forms a distinct community of interest."

4. Defendants admit that the 2010 Census reported Austin's population as 790,390 and that this exceeds the ideal population size for a congressional district by 91,902. The remaining allegations in paragraph 4 of Plaintiffs' First Amended Complaint state legal conclusions, which need not be admitted or denied, but to the extent they require admission or denial, Defendants admit that the City of Austin is a political subdivision of the State of Texas, and Defendants are

without knowledge or information sufficient to determine the truth of the allegations that “many residents” of Austin share “similar concerns” or that the City of Austin “forms a distinct community of interest.”

5. Admit.

### **Jurisdiction and Venue**

6. No response is required to the allegations in this paragraph as they raise questions of law.

### **Factual Background**

7. Admit that the existing configuration of congressional districts is known as Plan C100 and that it contains 32 single-member districts. Defendants admit that Congressional District 29 under Plan C100 is in Harris County. Defendants admit that Congressional Districts 15, 16, 20, 23, 27, and 28 are located along the Rio Grande River from El Paso to Brownsville and that certain districts extend north to San Antonio and Corpus Christi. The remaining allegations in paragraph 7 of Plaintiffs’ First Amended Complaint state legal conclusions, which need not be admitted or denied, but to the extent they require admission or denial, they are denied.

8. Admit.

9. Admit.

10. Defendants deny that African-Americans make up 11.5% of the Texas population. According to the 2010 Census, African-Americans make up 11.8% of the Texas population. Defendants admit the remaining allegations in this paragraph on information and belief.

11. Admit.

12. Admit.

13. Admit.

14. Defendants admit that the Governor signed Senate Bill 4 into law on July 18, 2011. Defendants admit the remaining allegations in paragraph 14 of the Plaintiffs' First Amended Complaint.

15. Defendants deny that Plan C185 has not been submitted for preclearance. The State has filed a lawsuit in the United States District Court for the District of Columbia seeking preclearance of Plan C185, and it has submitted Plan C185 informally to the Department of Justice. Defendants admit the remaining allegations in paragraph 15 of Plaintiffs' First Amended Complaint.

16. Defendants admit that Plan C100 remains the operative plan for congressional districts in Texas.

17. Defendants admit that Plan C100 contains only 32 single-member districts. The allegation that Plan C100 "does not accommodate" additional congressional seats states a legal conclusion, which need not be admitted or denied, but to the extent it requires admission or denial, it is denied. Defendants admit the remaining allegations in paragraph 17 of Plaintiffs' First Amended Complaint.

18. The allegations in paragraph 18 of Plaintiffs' First Amended Complaint and its subparts state legal conclusions, which need not be admitted or denied, but to the extent they require admission or denial, they are denied.

19. Plaintiffs' First Amended Complaint does not contain a paragraph 19.

20. Plaintiffs' First Amended Complaint does not contain a paragraph 20.

21. The allegation in paragraph 21 of Plaintiffs' First Amended Complaint states a legal conclusion, which need not be admitted or denied, but to the extent it requires admission or denial, it is denied.

22. Defendants admit that the population of Travis County exceeds the ideal population of a congressional district following the 2010 Census and that Plan C185 contains five districts that include a portion of Travis County. Defendants admit that most of the City of Austin's population is located in Travis County. Defendants admit that part of the City of Austin is in Williamson County and, under Plan C185, forms part of CD 31. The remaining allegations in paragraph 22 of Plaintiffs' First Amended Complaint state legal conclusions, which need not be admitted or denied, but to the extent they contain factual allegations that require admission or denial, they are denied.

23. Defendants admit the allegations of the first sentence of paragraph 23 of Plaintiffs' First Amended Complaint but deny the allegations of the second sentence.

24. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations regarding the demographic characteristics and electoral behavior of Travis County and the City of Austin. Defendants admit the existence of *Overton v. City of Austin*, 871 F.2d 529 (5<sup>th</sup> Cir. 1989) (per curiam), and *LULAC v. Clements*, 999 F.2d 831 (5<sup>th</sup> Cir. 1993) (en banc), and the conclusions reached by the Fifth Circuit in each case. The remaining allegation in paragraph 24 of the First Amended Complaint states a legal conclusion that need not be admitted or denied, but to the extent it requires admission or denial, Defendants are without knowledge or information sufficient to form a belief about the truth of the allegation that CD 25 in Plan C100 includes a "tri-ethnic voting coalition."

25. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in the first sentence of paragraph 25 of Plaintiffs' First Amended Complaint. Defendants admit that Gustavo "Gus" Garcia was elected mayor of Austin in 2001. Defendants admit that Council Member and Mayor Pro Tem Cheryl Cole is African-American. Defendants admit that Council Member Mike Martinez is Hispanic. Defendants admit that Travis County Judge Samuel T. Biscoe is African-American. Defendants admit that Travis County

Sheriff Greg Hamilton is African-American. Defendants admit that Travis County Attorney David Escamilla is Hispanic. Defendants admit that Travis County District Clerk Amalia Rodriguez-Mendoza is Hispanic. Defendants are without knowledge or information sufficient to form a belief about the truth of the allegation that of the district and county court at law judges of Travis County, four are African-American and four are Hispanic.

26. Defendants admit that CD 25 in Plan C100 includes part of Travis County and that sixty percent of CD25's population is in Travis County. The remaining allegations in this paragraph state legal conclusions that need not be admitted or denied, but to the extent they require admission or denial, they are denied.

27. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in the first sentence of paragraph 27 of Plaintiffs' First Amended Complaint. The remaining allegations in paragraph 27 appear to state conclusions of law, which need not be admitted or denied, but to the extent they contain factual allegations, those allegations are denied.

28. Defendants deny that any electoral district in the redistricting plans is the result of a purposeful, race-based decision intended to diminish the voting power of any racial or ethnic minority. The remaining allegations of paragraph 28 of Plaintiffs' First Amended Complaint and its subparts state legal conclusions that need not be admitted or denied, but to the extent they contain factual allegations, those allegations are denied.

29. Defendants deny that the Texas Legislature engaged in intentional discrimination against any racial or ethnic group or that it engaged in an intentional effort to dilute the influence of minority voters in Texas congressional elections. The remaining allegations in paragraph 29 of Plaintiffs' First Amended Complaint state legal conclusions, which need not be admitted or denied, but to the extent they include factual allegations, those allegations are denied.

## **Causes of Action**

### ***Count 1: VRA Section 2***

30. Paragraph 30 of Plaintiffs' First Amended Complaint states a legal conclusion, which need not be admitted or denied, but to the extent it requires admission or denial, it is denied.

### ***Count 2: Equal protection***

31. Paragraph 31 of Plaintiffs' First Amended Complaint states a legal conclusion, which need not be admitted or denied, but to the extent it requires admission or denial, it is denied.

### ***Count 3: Constitutional right to vote***

32. Paragraph 32 of Plaintiffs' First Amended Complaint states a legal conclusion, which need not be admitted or denied, but to the extent it requires admission or denial, it is denied.

### ***Count 4: One person, one vote***

33. Paragraph 33 of Plaintiffs' First Amended Complaint states a legal conclusion, which need not be admitted or denied, but to the extent it requires admission or denial, it is denied.

### ***Count 5: Section 5 injunction***

34. Paragraph 34 of Plaintiffs' First Amended Complaint states a legal conclusion, which need not be admitted or denied, but to the extent it requires admission or denial, it is denied.

## **Prayer for relief**

35. Defendants need not admit or deny legal argument or legal conclusions. To the extent the allegations must be admitted or denied, Defendants admit that the claims asserted in Plaintiffs' First Amended Complaint are properly considered by a three-judge court pursuant to 28 U.S.C. § 2284, but Defendants deny that Plaintiffs are entitled to any relief from this Court.

## **DEFENSES TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

1. Plaintiffs lack standing to challenge Plan C185 on the basis of alleged defects in CD 27. Accepting as true Plaintiffs' allegations in paragraph 2 of the First Amended Complaint, none

of the individual plaintiffs live within the boundaries of CD 27 under either Plan C100 or Plan C185. Plaintiffs' challenge to CD 27 under Plan C185 therefore fails for lack of subject matter jurisdiction.

2. Plaintiffs challenge to congressional districts in Tarrant County under Section 2 of the Voting Rights Act fails to state a claim on which relief may be granted because Plaintiffs cannot establish the threshold elements of a Section 2 vote dilution claim in Tarrant County. Plaintiffs do not allege, nor can they prove, that Tarrant County contains a geographically compact, politically cohesive population of minority voters large enough to form the majority in a congressional district, nor can they establish that based on the totality of circumstances, Plan C185 denies minority voters in Tarrant County an equal opportunity to elect candidates of their choice.

3. Plaintiffs' challenge to congressional districts in Travis County under Section 2 of the Voting Rights Act fails to state a claim on which relief may be granted because Plaintiffs cannot establish the threshold elements of a Section 2 vote dilution claim in Travis County. Plaintiffs do not allege, nor can they prove, that Travis County contains a geographically compact, politically cohesive population of minority voters large enough to form the majority in a congressional district, nor can they establish that based on the totality of circumstances, Plan C185 denies minority voters in Travis County an equal opportunity to elect candidates of their choice. To the extent Plaintiffs' claim is premised on the existence of a coalition of voters from different racial, ethnic, or language minority groups or on so-called crossover voting by Anglo voters, their claim is not cognizable under Section 2 of the Voting Rights Act.

4. Plaintiffs' Fourteenth Amendment Equal Protection Clause claim fails to state a claim on which relief may be granted because they do not allege, nor can they prove, any facts showing that the Texas Legislature enacted Plan C185 with the actual intent to discriminate against or deny the voting rights of Texans who belong to racial, ethnic, or language minority groups.

5. Plaintiffs' Fifteenth Amendment claim fails to state a claim on which relief may be granted because they do not allege, nor can they prove, that Plan C185 has the intent and effect of preventing Texans who belong to racial, ethnic, or language minority groups from voting in congressional elections.

6. Plaintiffs lack standing to pursue their claims against Defendant David Dewhurst because their injuries are not traceable to Lieutenant Governor Dewhurst and because the Lieutenant Governor cannot provide the relief they seek. The Lieutenant Governor does not have the power to stop any election or alter any redistricting plan. Plaintiffs have identified no basis for their claims against the Lieutenant Governor.

7. Plaintiffs lack standing to pursue their claims against Defendant Joe Straus because their injuries are not traceable to Speaker Straus and because the Speaker cannot provide the relief they seek. The Speaker does not have the power to stop any election or alter any redistricting plan. Plaintiffs have identified no basis for their claims against the Speaker.

8. Plaintiffs' claim under Section 5 of the Voting Rights Act is not justiciable because Plaintiffs do not allege, nor can they prove, that the State of Texas will attempt to implement Plan C185 before obtaining preclearance. The State of Texas has filed suit for judicial preclearance in the United States District Court for the District of Columbia. Defendants are fully aware that Section 5 prevents the State from implementing any change in voting practices or procedure until preclearance has been granted. Plaintiffs thus cannot show any actual or imminent injury sufficient to confer standing to sue.

**AFFIRMATIVE DEFENSES TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

1. Defendants assert the defense of Eleventh Amendment immunity to all claims to which that defense applies.

2. Defendants assert the right to amend these affirmative defenses to assert additional

affirmative defenses as they may become known to Defendants.

**DEFENDANTS' PRAYER**

Defendants request that the Court enter a judgment that Plaintiffs take nothing by this suit, that Plaintiffs' claims be dismissed with prejudice, and that Defendants be granted such other and further relief to which they may show themselves to be justly entitled.

Dated: August 8, 2011

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on August 8, 2011 on the following via the Court's electronic notification system or by other means where indicated:

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