

within the boundaries of a single county. It further defines the circumstances under which a county line may be broken to draw a state representative district.

HB 1 on its face violates the express, plain language of the county line rule by splitting the Cameron County line twice, extending in two different directions into two different contiguous counties to form two distinct state representative districts: House Districts 35 and 37. The county line rule requires that if a county has a surplus population that cannot be kept within a single county's boundaries due to equal population requirements, the surplus must be treated as a singular entity which can only be joined in a *single* state representative district with area from another contiguous county or counties. Both the plain language of the Texas Constitution and long-established, binding Texas Supreme Court precedent dictate this interpretation.

Although it is permissible to break the county line rule to comply with superseding federal law—such as the Voting Rights Act or the Fourteenth Amendment's one person-one vote principle—absent such a compelling purpose, the language of the Texas Constitution controls. No federal law requires splitting Cameron County in two different directions into multiple different representative districts. Therefore, this district configuration plainly violates the Texas Constitution and Defendants have no legal authority to implement it in an election.

II. **DISCOVERY CONTROL PLAN**

1. Pursuant to Texas Rule of Civil Procedure 190.1, Plaintiff intends to conduct discovery under Discovery Level 3.

III. **PARTIES**

2. Plaintiff, Mexican American Legislative Caucus, Texas House of Representatives (hereinafter MALC), is the nation's oldest and largest Latino legislative caucus. MALC is a non-

profit organization established to serve the members of the Texas House of Representatives and their staff in matters of interest to the Mexican American community of Texas, in order to form a strong and cohesive voice on those matters in the legislative process, including redistricting. MALC's mission includes maintaining and expanding Latino representation across elected offices in Texas. MALC strives to raise the level of Latino engagement in Texas government and politics through policy, education, outreach, organizing, and advocacy. MALC's membership is comprised of members of the Texas House of Representatives. As Texas State Representatives, MALC members have a unique interest in passing laws which comply with the Texas Constitution. The Texas House Representatives who represent the areas challenged in this Petition are members of MALC. Additionally, as voters in the challenged districts, one or more MALC members will face increased difficulty in electing their candidates of choice under HB 1.

3. Defendant Greg Abbott is the Governor of the State of Texas. Pursuant to Article IV, § 1 of the Texas Constitution, he is the chief executive officer of the State of Texas. His duties include ordering the elections for the Texas House of Representatives. He is sued in his official capacity. He may be served at the Office of the Governor, State Insurance Building, 1100 San Jacinto, Austin, Texas 78701.

4. Defendant John Scott is the current Texas Secretary of State, appointed by Governor Greg Abbott on October 21, 2021. The Secretary of State is the chief election officer of this state. He supervises elections and has constitutional and statutory duties associated with redistricting and apportionment, including advising election authorities on boundaries of districts, setting election deadlines for new districts, and enforcement of certain election rules and laws. He is sued in his official capacity. He may be served at 1019 Brazos Street, Austin, Texas 78701.

5. At all times relevant hereto, all Defendants were and have been acting under color of statutes, ordinances, regulations, customs, and usages of the State of Texas.

IV. **JURISDICTION AND VENUE**

6. Plaintiff seeks non-monetary declaratory and injunctive relief. This Court's jurisdiction to enter injunctive relief in this lawsuit is established by Texas Civil Practice and Remedies Code Section 65.001, *et seq.* This Court's jurisdiction to enter declaratory relief is established by Texas Civil Practice and Remedies Code Section 37.001, *et seq.* The Court has jurisdiction over Defendants because the doctrine of governmental immunity is inapplicable to state officials sued in their official capacity for ultra vires actions, and Plaintiff brings ultra vires claims against Defendants. *See Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154 (Tex. 2016).

7. Travis County is the proper venue for this lawsuit because the Defendants are located in Travis County and the challenged actions occurred in Travis County with the passage of HB 1. *See* TEX. CIV. PRAC. & REM. CODE § 15.002(a).

V. **FACTS**

A. Legal Background

i. Article III, § 26 of the Texas Constitution: The County Line Rule

8. Article III, § 26 of the Texas Constitution reads in its entirety:

The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the House is composed; provided, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county, and for any surplus of

population it may be joined in a Representative District with any other contiguous county or counties.

9. In other words, before the legal developments discussed below, the rule was read to mean that if the population of a county was too small to make up an entire state representative seat, it must be kept whole and joined with other whole counties to create a district. If a county had a population exceeding that which entitled it to one or more representatives, that County was to be apportioned the number of seats to which it was entitled, and, if there was a leftover population that was not big enough to warrant an extra district, the County could be joined with contiguous counties for an extra representative seat. *See Smith v. Craddick*, 471 S.W.2d 375, 376 (Tex. 1971).

10. Until the mid-Twentieth Century, complying with this rule was accomplished through the use of multi-member districts, flatorial districts (districts which partially overlap one another), and extreme population deviations between districts. For an example of a flatorial district: County A was large enough for three and a half districts, and the neighboring County B was large enough for one half of a district. So, the Legislature would create three multi-member districts wholly contained in County A, and create a fourth district made up of the combined whole counties of A and B.

ii. Federal Limitations on the County Line Rule

11. Following rulings by the United States Supreme Court in *Reynolds v. Sims*, 377 U.S. 533 (1964) and its progeny, which defined the federal constitutional principle of one person-one vote, both federal and state courts held that Texas's use of flatorial districts violated one person-one vote by resulting in impermissible populations between districts. *See Kilgarlin v. Martin*, 252 F. Supp. 404, 410 (S.D. Tex. 1966), *rev'd sub nom. on other grounds Kilgarlin v. Hill*, 386 U.S. 120 (1967); *Smith v. Craddick*, 471 S.W.2d at 377. The U.S. Supreme Court further held that population deviations ranging from 14% overpopulated to 11% underpopulated between single member

and/or multi-member districts were also constitutionally impermissible. *Kilgarlin v. Hill*, 386 U.S. at 123-25 (1967).

12. Additionally, courts held that the federal constitution, and later the Voting Rights Act, required the use of single member districts in counties that were entitled to more than one district in Texas. *See White v. Regester*, 412 U.S. 755 (1973) (later codified as Section 2 of the Voting Rights Act, 52 U.S.C. 10103).

iii. What Does the County Line Rule Mean Now?

13. After the one person-one vote rulings, the Texas Supreme Court was faced with the question of whether the county line rule inherently conflicted with the United States Constitution so as to invalidate the rule in its entirety. *Smith*, 471 S.W.2d 375. The Court recognized that the Legislature and courts are not free to disregard the Texas Constitution simply because implementing it may be complicated in light of federal law. *Id.* at 379 ("We understand some of the difficulties of every undertaking to redistrict this state. However, this court may not abrogate any provision of the constitution for the sake of simplicity. The federal requirement of equal representation clearly has not nullified Section 26 of Article III in its entirety."). Therefore, the Court held that the county line rule must still be adhered to as closely as possible without violating federal law. *Id.*

14. The Court in *Smith* summed up the resulting interpretation of the county line rule in light of one person-one vote as follows:

1. Section 26 requires that apportionment be by county and when two or more counties are required to make up a district of proper population, the district lines shall follow county boundaries and the counties shall be contiguous. A county not entitled to its own representative must be joined to contiguous counties so as to achieve a district with the population total entitled to one representative. The only impairment of this mandate is that a county may be divided if to do so is necessary in order to comply with the equal population requirement of the Fourteenth Amendment. We are not to be understood as proscribing multi-member districts within a single county; in the absence

of some discriminatory effect neither state nor federal constitution presents any obstacle there.

2. The first clause of the proviso dictates that a county must be formed into a separate district if it has sufficient population for one representative. This would be effective only so long as the population of that county is within permissible limits of variation. If the population of the county is slightly under or over the ideal population figure, the state constitution requires that the county constitute a separate district.

3. The final clause of Section 26 dictates that, for any surplus population, the County shall be joined with contiguous county or counties in a flatorial district. This dictate is nullified.

4. With the nullification of the dictate relative to use of the surplus population (less than enough for a district) of a county which already has one or more representatives allocated thereto, it becomes permissible to join a portion of that county (in which the surplus population reside and which is not included in another district within that county) with contiguous area of another county to form a district. For example, if a county has 100,000 population, and if a district of 75,000 population is formed wholly within that county, the County is given its district, and the area wherein the 25,000 live may be joined to a contiguous area.

5. It is still required that a county receive the member or members to which that county's own population is entitled when the ideal district population is substantially equalled or is exceeded. No exception to this requirement is made by what is said in 4. above. Again, all requirements of Section 26 are inferior to the necessity of complying with the Equal Protection Clause.

Id. at 377-78 (internal citations omitted).

15. A key principle in both the plain language of the Texas Constitution itself and the Texas Supreme Court's interpretation of the county line rule in light of *Reynolds*, is that for any county which has enough population for one or more representatives and also has a left-over surplus that cannot be wholly contained in the county, that surplus may only be joined in one single representative district with area from another contiguous county or counties.

16. The Texas Constitution states, "for any surplus of population it may be joined in a *Representative District* with any other contiguous county or counties." Tex. Const. Art. III § 26 (emphasis added). The Constitution speaks in the singular about a single representative district, whereas elsewhere in the Clause it uses phrases such as "Representative or Representatives" when it wishes to indicate the possibility of more than one district or representative.

17. The Court in *Smith* also speaks in the singular: "it [is] permissible to join *a* portion of that county (in which the surplus population reside . . .) with contiguous area of another county to form *a* district. For example, if a county has 100,000 population, and if a district of 75,000 population is formed wholly within that county, the County is given its district, and the area wherein the 25,000 live may be joined to *a* contiguous area." *Smith*, 471 S.W.2d at 378 (emphasis added).

18. Finally, the Court invalidated a Texas House redistricting plan because, among other violations of the county line rule, "three counties, Nueces, Denton and Brazoria, which [were] entitled to one or more representatives, [were] cut so that their surplus populations [were] joined to two, rather, than one adjoining district." *Clements v. Valles*, 620 S.W.2d 112, 114 (Tex. 1981).

B. HB 1 Violates the County Line Rule by Splitting the Cameron County Line Twice Instead of Only Once.

19. According to the 2020 decennial census, which forms the basis for the population numbers used by the Texas Legislature in this cycle of reapportionment, Cameron County has a population of 421,017. When divided by the state's total population, this equates to 2.17 state representative districts. The County cannot fit three whole districts because that would result in each district being underpopulated by 27.8%, nor can it have only two districts for its entire population because that would result in each district being overpopulated by 8.3% (which, when taken alongside the rest of the statewide plan, would result in an impermissible overall deviation range). Therefore, Cameron County has a surplus population which must be joined with area from a contiguous county to form a district.

20. Under the district configuration which has been in place for the last decade, Cameron County's surplus population is joined in a single district, HD 35, which extends into neighboring Hidalgo County. This complies with the county line rule because Cameron's surplus is joined with area from a neighboring county in a single representative district.

21. Under HB 1, part of Cameron County would still be split into HD 35, crossing into Hidalgo County. However, it would also be split a second time in HD 37, which would now extend into Willacy County. In other words, the Cameron County line would be broken twice, once in a district stretching into Hidalgo County, and once in a different district stretching into Willacy County. So, instead of Cameron County getting two wholly contained districts and one partial district, under HB 1 it would only get one wholly contained district and then be split into two distinct partial districts.

22. This arrangement was unnecessary to comply with the one person-one vote principle. Combined, the populations of Hidalgo and Cameron Counties are sufficient to contain seven whole districts within their borders, essentially maintaining their current configuration with minor tweaks, while allowing for an overall statewide top-to-bottom deviation at or below the 9.98% range in HB 1.

23. Alternative proposals were presented to the Legislature which would have avoided violating the county line rule in Cameron County while keeping the statewide plan within an allowable deviation range. These proposals were presented formally for consideration by the Texas House Redistricting Committee and on the House floor, and informally to the Chair of the Texas House Redistricting Committee, Representative Todd Hunter, by members of the South Texas delegation of the Texas House of Representatives.

VI. **CAUSES OF ACTION**

A. Enforcement of HB 1 Violates Article III, § 26 of the Texas Constitution.

24. HB 1 on its face violates Article III, § 26 of the Texas Constitution, the county line rule, by splitting Cameron County's surplus population into two different districts going two separate directions into two different counties.

25. Defendants have no legal authority to order, oversee, administer, or certify an election based on an unconstitutional reapportionment plan, and will therefore be acting ultra vires should they proceed to implement or enforce HB 1 for upcoming primary or general elections.

B. Request for Preliminary and Permanent Injunctive Relief.

26. Plaintiff requests a preliminary and permanent injunction enjoining the administration and oversight of upcoming primary and general elections pursuant to HB 1 because it is unconstitutional.

27. Plaintiff will suffer irreparable harm should the State of Texas proceed with elections under HB 1 because the reapportionment plan unconstitutionally violates the county line rule. The MALC members who are residents of Cameron County have an interest in maintaining Cameron County's representational power, which is embodied by the Texas Constitution's county line rule. Unquestionably, that power will be diluted by splitting Cameron County unnecessarily into two districts extending in two different directions. Further, those members' ability to consistently win election, or, as voters in the region, to elect candidates from Cameron County, will be diminished by bringing new populations into the districts. As elected members of the Texas House of Representatives, all MALC members have a unique interest in preserving the Texas Constitution. Indeed, they must swear an oath to "preserve, protect, and defend the Constitution and laws of the United States and of this State." Tex. Const. Art. 16 § 1. Their ability to preserve, protect, and defend the Constitution of this State is undermined should unconstitutional laws be allowed to take effect.

28. Plaintiff has a likelihood of success on the merits because HB 1 as drawn (and as explained above) plainly violates the Texas Constitution on its face.

29. The Court should enter an injunction finding that the redistricting plans proposed and signed into law in HB 1 are unconstitutional, and suspend all election-related deadlines for the primary and general elections in 2022 to allow for the creation of remedial plans.

VII.
PRAYER

THEREFORE, Plaintiff respectfully prays for the following relief:

- Declaratory relief stating that HB 1 violates Article III, § 26 of the Texas Constitution.
- Declaratory relief that Defendants imminently stand to violate Article III, § 26 of the Texas Constitution by implementing HB 1 and would be acting ultra vires in doing so.
- Enjoin Defendants from ordering elections, overseeing elections, certifying results, or otherwise implementing HB 1 in any upcoming primary or general elections for the Texas House of Representatives.
- Adopt a legally appropriate alternative configuration for the Texas House of Representative districts in Cameron County and such other districts which may need to be resultantly reconfigured to comply with federal and state law.
- Award attorneys fees pursuant to the Texas Uniform Declaratory Judgment Act.
- Such other relief as the Court deems appropriate.

Dated: November 03, 2021.

Respectfully submitted,

By: /s/ George (Tex) Quesada

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ATTORNEYS FOR PLAINTIFF

VERIFICATION

THE STATE OF TEXAS

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COUNTY OF DALLAS

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BEFORE ME, the undersigned notary public, on this day personally appeared Rafael Anchía, Chair of the Mexican American Legislative Caucus, who, being by me duly sworn on his oath deposed and said he has read the preceding Petition and Application and every material statement made therein is within his personal knowledge and is true and correct.



RAFAEL ANCHÍA

SUBSCRIBED AND SWORN TO BEFORE ME on this the 2nd day of November
→ 2021, to certify which witness my hand and official seal.





Notary Public, State of Texas