

CAUSE NO: _____

IN RE PETITION OF	§	IN THE DISTRICT COURT
	§	
MEXICAN AMERICAN	§	
LEGISLATIVE CAUCUS,	§	
Petitioner,	§	
	§	TRAVIS COUNTY, TEXAS
	§	
	§	
	§	
	§	_____ DISTRICT COURT

VERIFIED PETITION FOR DEPOSITION TO INVESTIGATE POTENTIAL VIOLATIONS OF THE TEXAS OPEN MEETINGS ACT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Mexican American Legislative Caucus (“MALC” or “Petitioner”), and pursuant to Texas Rules of Civil Procedure 202, files its Petition for Deposition to Investigate Potential Claim and would show as follows:

“In this chapter, **the legislature is exercising its powers to adopt rules to prohibit secret meetings of the legislature, committees of the legislature,** and other bodies associated with the legislature, except as specifically permitted in the constitution.”

--Section 551.003 of the Texas Open Meetings Act.

1.00 PARTIES

1.01 Petitioner 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 staffs 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. Many of its members are elected from and represent constituencies in majority Latino districts and many of its members are Latino.

1.02 MALC seeks to depose Adam Foltz (“Foltz”), an individual residing in Travis

County, Texas. Foltz currently resides at 1219 South Lamar Blvd, Unit 804, Austin, Texas 78704 is employed by the Texas Legislative Council located at 1501 Congress Avenue, Austin, Texas 78701, and works at the Texas House Redistricting Committee at Ext E2.158, 1100 Congress Avenue, Austin, Texas 78701. To the best of Petitioner's knowledge, Foltz's office telephone number is 512-463-9948. Petitioner does not have personal knowledge of Foltz's personal telephone number at this time. Petitioner desires to take Foltz's deposition to investigate a potential claim or suit for potential violations of the Texas Open Meetings Act.

2.00 JURISDICTION AND VENUE

2.01 Pursuant to Texas Rules of Civil Procedure 202.2(b), venue is proper in Travis County because Foltz currently resides in Travis County. In addition, the acts giving rise to the potential claims that are being investigated likely all occurred or took place in Travis County, Texas.

3.00 STATEMENT OF FACTS

3.01 Texas is currently redrawing districts for elected representatives. Specifically, the Texas Legislature is currently legislating maps for the Texas House of Representatives, the Texas Senate, the Texas State Board of Education, and the Texas Congressional delegation.

3.02 In a brazen effort to deprive historically disenfranchised communities of color from being able to participate fully in the redistricting process, the leadership of the Texas Legislature has refused to provide meaningful time for review, discussion, deliberation, and debate over the maps being proposed for adoption. One such effort to prevent a fair and open process was the hiring of a partisan redistricting operative, Adam Foltz, using public funds appropriated to the Texas Legislative Council, but who works at the direction of State Representative Todd Hunter, Chairman of the Texas House of Representatives Redistricting Committee (the "Redistricting

Committee”). Foltz is paid by the Texas Legislative Council – a non-partisan state agency that supports the Legislature in drafting and analyzing proposed legislation and, importantly, manages the internal mapping tool lawmakers use to redraw political maps. The Redistricting Committee is comprised of eight (8) Republican state representatives and seven (7) Democratic state representatives, with the Republican membership of the Committee therefore sufficient to constitute a quorum on its own. No conversations with Foltz by any member of the Committee have taken place in open, public meetings, and access to Foltz by all Democratic members of the Redistricting Committee has been denied by Chairman Hunter, a Republican. Indeed, Foltz’s hiring was never disclosed to the public, except through independent investigative journalism, nor to the Democratic members of the House Redistricting Committee.

3.03 Foltz’s undisclosed employment gives rise to potential violations of the Texas Open Meetings Act. The Redistricting Committee was appointed to supervise or control the public business of redistricting in the 87th Legislature. As such, the Redistricting Committee is a “governmental body” subject to the Texas Open Meetings Act. The Texas Open Meetings Act precludes deliberation and discussion of matters within the jurisdiction of the governmental body outside of a formal and properly noticed regular or special meeting among a quorum of members. Section 551.001(4)(A) and (B) of the Texas Open Meetings Act apply when a quorum of a governmental body engages in deliberations or discussions either among the members of the quorum or between the quorum and a third party or the quorum receives information from a third party. Section 551.143 of the Texas Open Meetings Act prohibits discussions about an item of public business among a quorum of a governmental body through a series of communications.

3.04 Foltz’s employment by the Texas Legislative Council under the explicit direction and control of Chairman Todd Hunter further raises concerns about the nature and flow of

information between certain members of the House Redistricting Committee drawn into districts with Anglo majority constituencies and the Texas Legislative Council. Thus, Foltz's employment by Texas Legislative Council could give rise to potential claims of asymmetrical information availability and serve as circumstantial evidence of actual intent to discriminate against non-Anglo communities and individuals in the state. Given the speed with which Chairman Hunter passed his proposed maps out of the Redistricting Committee, any asymmetry in information access and availability would have a real and purposeful effect of preventing an open and transparent process, which is a significant factor courts consider when analyzing claims of intentional racial discrimination. In fact, a federal three judge panel highlighted the "exclusion of minority members and public input despite the minority population growth, the misleading information, the secrecy and closed process, and the rushed process..." in last decade's redistricting process when finding intentional discrimination. *Perez v. Abbott*, 253 F. Supp. 3d 864 (W.D. Tex. 2017).

3.05 Petitioner is entitled to investigate communications between Foltz and Hunter as well as the GOP members of the House Redistricting Committee. If Foltz is considered a member of the Texas Legislative Council, then his communications with Chairman Hunter and the GOP members of the House Redistricting Committee or the GOP caucus in the larger House of Representatives may give rise to potential violations of the Texas Open Meetings Act. But even if Foltz is simply a secret employee of the House Redistricting Committee, his communications with only certain members of the legislature raise serious issues about an opaque process designed to fashion legislation shielded from the eyes of the public and minimize participation by minority communities, and then sprinted through the policymaking process for a rubber stamp approval by the Governor.

3.06 The circumstances of the actual publication of Chairman Hunter's proposed map for redistricting the Texas House makes this "secrecy and speed strategy" obvious. Chairman Hunter revealed his proposed map of the Texas House redistricting on Thursday, September 30, 2021 when he filed House Bill 1. At the same time, Chairman Hunter posted a public notice to hear public testimony on the following Monday, October 4, 2021 at 9:00 a.m. Chairman Hunter also required all proposed amendments to HB1 by members of the Committee be delivered by 12:00 p.m. on October 4, 2021, leaving members of the Committee who had no prior knowledge of the maps with grossly insufficient time to analyze the map and prepare amendments.

3.07 After only one business day notice and three calendar days notice, including a weekend, the House Redistricting Committee only held a single public hearing to discuss and deliberate on the proposed HB1. The Redistricting Committee refused to permit either expert witness testimony or resource witness testimony to fully inform the members of the Committee about potential problems with the proposed maps. The Committee then, in an extraordinary move, forced members to vote on committee amendments (which had just been distributed hours before) and the bill itself as part of the same hearing. Given the importance and magnitude of the legislation, this time frame for passage of the proposed bill was unnecessarily and irregularly truncated.

3.08 The Texas House of Representatives Calendars Committee set HB1 for floor consideration on October 12, 2021 and required all amendments to be filed by 6 p.m on Sunday, October 10, 2021. Again, given the importance and magnitude of the legislation, the time for review of the legislation and to provide meaningful review and amendments to the legislation was unnecessarily and irregularly truncated.

3.09 On October 12, 2021, the Texas House of Representatives again truncated debate and deliberation over HB1. Instead of recessing so that deliberation could occur during normal working hours, the House leadership ensured that HB1 was passed under the cover of darkness and HB1 was voted on at approximately 3:40 a.m. in the morning on October 13, 2021. HB1 passed the Texas House.

3.10 Given the irregular speed of the process and the asymmetry of information, Petitioner believes legitimate claims for violations of the Texas Open Meetings Act likely exist and the deposition will facilitate an investigation into those claims. The deposition of Foltz will facilitate an investigation into those claims.

3.11 Moreover, the ending date for the current legislative session is October 19, 2021. Once maps are finalized and voted on in the Texas Legislature, it is entirely possible that Foltz will leave the jurisdiction, which may complicate or preclude obtaining valuable and important testimony from a key witness in the GOP's efforts to redistrict the State of Texas to their advantage. Foltz is an out-of-state political operative that has a history of working with the GOP to gerrymander districts. In 2012, a federal district court admonished the work of the Wisconsin GOP, in which Foltz was directly and heavily involved, for conducting public business in secret and out of the public eye. There is no reason to believe that Foltz will stay in Texas and within the jurisdiction of the court once the maps are finally approved and the redistricting work is completed.

4.00 POTENTIAL CLAIM BY PETITIONER

4.01 In accordance with Rule 202.2(d), Petitioner seeks to investigate potential claims for violation of the Texas Open Meetings Act. The Court has subject matter jurisdiction of claims under the Texas Open Meetings Act.

4.02 MALC is a potential party in any suit alleging violations of the Texas Open

Meetings Act.

4.03 The Court has personal jurisdiction over Foltz because he presently resides in the County and has purposefully availed himself of the benefits and advantages of Texas law by working for Chairman Hunter and/or the Texas Legislative Council. As a result, Foltz has the necessary minimum contacts with the State of Texas to satisfy any personal jurisdiction requirements.

5.00 POTENTIAL ADVERSE INTERESTS

5.01 In accordance with Rule 202.2(f), Petitioner expects that Chairman Todd Hunter may have interests adverse to Petitioner's in the anticipated suit. The current address for Chairman Todd Hunter is Room 1W.5, 1100 Congress Avenue, Austin, Texas 78701. The current telephone number for Chairman Todd Hunter is 512-463-0672.

6.00 DEPOSITION SOUGHT

6.01 In accordance with Rule 202.2(g), Petitioner asks this Court for an order authorizing the deposition on oral examination of Adam Foltz. Specifically, Petitioner seeks to depose Adam Foltz on the following topics:

- (1) The circumstances of his hiring and work in Texas for the Texas House Redistricting Committee, Chairman Todd Hunter, and/or the Texas Legislative Council;
- (2) His employment terms and conditions;
- (3) The scope of his work on redistricting issues;
- (4) Communications with Todd Hunter;
- (5) Communications with GOP members of the Texas House Redistricting Committee concerning redistricting;

- (6) Communications with GOP members of the Texas House of Representatives concerning redistricting proposals;
- (7) Communications with the Office of the Texas Attorney General, the Texas Attorney General, his employees and agents concerning redistricting proposals;
- (8) Communications with the Office of the Governor Greg Abbott, Greg Abbott, his employees and agents concerning redistricting proposals;
- (9) The sources of data that were used to determine how to redraw districts;
- (10) Considerations of race in drawing redistricting proposals;
- (11) Communications with any third parties regarding the Texas redistricting proposals or HB1;
- (12) Analysis of electoral performance of districts which was shared with Chairman Hunter or Republican members of the Redistricting Committee, and the metrics used to perform such analysis;
- (13) Communications with any advisor on the racial makeup or composition of Texas districts under any proposed maps or HB1;
- (14) Any regression models that were used to test performance of the current districts and any proposed districts, including those districts that ultimately were used in HB1;
- (15) All modeling and projected performance maps or arrays of maps that were utilized in discussions over redistricting;

6.02 Petitioner requests that the Court order Foltz to produce the following documents at the deposition pursuant to an authorized subpoena duces tecum accompanying the Order Authorizing Deposition:

- (1) Adam Foltz's employment agreement with the Texas Legislative Council;

(2) Adam Foltz's employment agreement with either Chairman Todd Hunter and/or the Texas House Redistricting Committee;

(3) All agreements related to work being done on redistricting in Texas between Adam Foltz and any of the following: Todd Hunter, the Texas House Redistricting Committee, the Texas Legislative Council, or any other entity or individual.

(4) All drafts of any proposed redistricting map created or revised by Foltz;

(5) All regression analyses compiled or maintained or used by Foltz in redistricting;

(6) All e-mail, text messages, Signal, or other third party app used to facilitate digital communication between Foltz and Hunter;

(7) All e-mail, text messages, Signal, or other third party app used to facilitate digital communication between Foltz and any member of the Texas House Redistricting Committee;

(8) All e-mail, text messages, Signal, or other third party app used to facilitate digital communication between Foltz and the Texas Legislative Council;

(9) All e-mail, text messages, Signal, or other third party app used to facilitate digital communication from Foltz related to redistricting in the State of Texas from his date of hire by Chairman Hunter to present day.

(10) All demographic reports produced on potential districts under consideration for inclusion in H.B. 1.

(11) All reports analyzing electoral performance of potential districts under consideration for H.B.1.

6.03 Permitting the deposition of Foltz may prevent a failure or delay of justice because it will help discover any potential violations of the Texas Open Meetings Act, potentially provide a basis to seek immediate extraordinary injunctive relief to remedy any such violation, and to

preserve the testimony of a witness that may flee the jurisdiction once the redistricting work for which he was hired from out of state is complete.

6.04 The likely benefit of permitting Petitioner to take the deposition far outweighs the burden or expense of the procedure. Petitioner will cover the cost of any court reporter and stenographer. Given the importance and salience of the issues that are being investigated – secrecy in government and the fundamental right to vote – a single day deposition to explore and investigate potential anomalies in the process is hardly a burden.

7.00 RELIEF REQUESTED

Petitioner respectfully requests an order of this Court authorizing his counsel to take the deposition of Adam Foltz on November 4, 2021 at 9:00 a.m. in Travis County at 1122 Colorado Street #107, Austin, Texas 78701, and to authorize counsel to issue a subpoena duces tecum to compel attendance at such deposition and produce responsive documents at that time. Petitioner seeks all such other and further relief to which he may be justly entitled.

Respectfully submitted,

SOMMERMAN, MCCAFFITY,
QUESADA & GEISLER, L.L.P.

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VERIFICATION

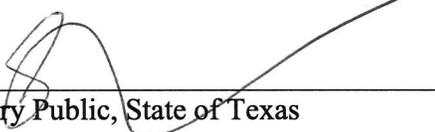
THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned notary public, on this day personally appeared Jaclyn Uresti, President of the Mexican American Legislative Caucus, who, being by me duly sworn on her oath deposed and said she has read the preceding Petition for Deposition to Investigate Potential Claim and every material statement made therein is within her personal knowledge and is true and correct.



JACLYN URESTI

SUBSCRIBED AND SWORN TO BEFORE ME on this the 19 day of October __, 2021, to certify which witness my hand and official seal.



Notary Public, State of Texas

