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July 5, 2023

Via CM/ECF

Lyle W. Cayce, Clerk
United States Court of Appeals for the Fifth Circuit

Re: No. 22-50775, *La Union del Pueblo Entero, et al. v. Nelson, et al.* (Consolidated with Nos. 22-50777 and 22-50778)

Dear Mr. Cayce,

I write in response to the letter dated June 29, 2023 concerning this Court's recent decision *Ostrewich v. Tatum*, No. 21-20577 (5th Cir. 2023), ECF 169 (the "State Defendants' Letter"). Contrary to the State Defendants' Letter, nothing in *Ostrewich* saves Texas's Secretary of State or Attorney General from standing trial on any challenged provision.

First, *Ostrewich* is inapplicable to Plaintiffs' statutory claims under the Voting Rights Act, Americans with Disabilities Act and Rehabilitation Act, each of which validly abrogated state sovereign immunity. The State Defendants are proper defendants for Plaintiffs' federal statutory claims, which encompass all challenged provisions of S.B.1 other than Sections 4.06 and 4.09.

Second, *Ostrewich* does not require a different result for the subset of Plaintiffs' constitutional claims concerning the "eleven sections of S.B.1" referenced in the State Defendants' Letter, ECF 169 at 1. Unlike *Ostrewich*, the district court here did not rely solely on "training and advisory duties" found elsewhere in the Election Code, 2023 WL 4231608, at *4. Rather, for Sections 4.07 and 6.01, the district court cited a "training" program for poll watchers that S.B.1 itself requires the Secretary to create, and which constrains watchers by preventing them from serving unless they produce a certificate of completion from the Secretary, and which would have to be revised by the Secretary if the challenged provisions are found to be unconstitutional. *E.g.*, ROA.22-50775.10608-09. The Secretary's other relevant enforcement duties—including without limitation prescribing forms, rules, and other materials necessary to enforce the challenged provisions, sanctioning voter registrars, reporting to the state legislature, and referring suspected Election Code violations, including to prosecuting attorneys, *e.g.*, ROA.22-50775.10598-600, -607-10, -740-43—were not addressed in *Ostrewich*.¹

Third, unlike *Ostrewich*, the text of the challenged statute (here, S.B.1) manifests the Legislature's intent that the Attorney General would play an important role in enforcing the statute's civil and criminal penalties. *E.g.*, Tex. Elec. Code §§15.028, 18.065, 31.006, 34.005,

¹ There are no constitutional claims for Section 5.10.

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64.009, 87.0431. That one portion of the Legislature's enforcement scheme has separately been declared unconstitutional after this litigation commenced should not immunize the Attorney General from suit as to S.B.1's other unconstitutional provisions.

Respectfully submitted,

/s/ Rebecca L. Martin
Rebecca L. Martin

cc: All counsel of record (via ECF)

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