Nos. 11-713, 11-714, 11-715

In the Supreme Court of the United States

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

WENDY DAVIS, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.

On Appeal from the United States District Court for the Western District of Texas

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JOINT APPENDIX, Vol. 1 of 5

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December 21, 2011 (Counsel continued on inside cover)

11-713, 11-714, 11-715, Appeal Docketed December 12, 2011
11-713, 11-714, 11-715, Probable Jurisdiction Noted December 9, 2011

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RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS (San Antonio)

Civil Docket for Case #5:11-cv-00360-OLG-JES-XR

PEREZ, et al.* v. *PERRY, et al.

Date Filed	#	Docket Text
05/09/2011	1	COMPLAINT (Filing fee $350 receipt number 0542–3609997). No Summons requested at this time, filed by Harold Dutton, Jr, Shannon Perez. (Attachments: #1 Civil Cover Sheet) (Richards, David) (Entered: 05/09/2011)
* * *		
05/11/2011	4	ORDER Constituting Three–Judge Court to Judge Orlando L. Garcia, Judge Jerry E. Smith and Judge Xavier Rodriguez. Signed by Judge Edith H. Jones. (ga) (Entered: 05/11/2011)
05/31/2011	5	AMENDED COMPLAINT against Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus amending 1 Complaint., filed by Harold Dutton, Jr, Shannon Perez, Gregory Tamez. (Richards, David) (Entered: 05/31/2011)

06/07/2011	6	AMENDED COMPLAINT Second against Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus amending 1 Complaint, 5 Amended Complaint., filed by Harold Dutton, Jr, Gregory Tamez, Shannon Perez. (Richards, David) (Entered: 06/07/2011)
	* * *	
06/14/2011	9	MOTION to Dismiss for Lack of Jurisdiction, MOTION to Dismiss for Failure to State a Claim Upon Which Relief May Be Granted by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Attachments: #1 Proposed Order) (Schenck, David) (Entered: 06/14/2011)
	* * *	
06/24/2011	18	RESPONSE to Motion, filed by Harold Dutton, Jr, Shannon Perez, Gregory Tamez, re 9 MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim Upon Which Relief May Be Granted filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry,

		Defendant David Dewhurst (Attachments: #1 Exhibit A #2 Proposed Order) (Richards, David) (Entered: 06/24/2011)
		* * *
07/01/2011	20	MOTION to Dismiss Plaintiffs' Second Amended Complaint by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Attachments: #1 Proposed Order Proposed Order) (Schenck, David) (Entered: 07/01/2011)
		* * *
07/06/2011	22	ORDER DENYING as moot 9 Motion to Dismiss for Lack of Jurisdiction; DENYING as moot 9 Motion to Dismiss. Signed by Judge Orlando L. Garcia. (rf) (Entered: 07/06/2011)
07/06/2011	23	ORDER OF CONSOLIDATION – consolidating this case with SA11–CV–361 and SA11–CV–490. Signed by Judge Orlando L. Garcia. (rf) (Entered: 07/06/2011)
		* * *
07/11/2011	26	Response in Opposition to Motion, filed by Harold Dutton, Jr, Shannon Perez, Gregory Tamez, re 20 MOTION to Dismiss Plaintiffs' Second

		Amended Complaint filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst Plaintiffs' Response to Motion to Dismiss Plaintiffs' Second Amended Complaint (Richards, David) (Entered: 07/11/2011)
	* * *	
07/13/2011	37	NOTICE of Initial Disclosures by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus (Schenck, David) (Entered: 07/13/2011)
07/13/2011	38	NOTICE of Initial Disclosures by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus (Schenck, David) (Entered: 07/13/2011)
07/14/2011	39	MOTION to Dismiss Defendant's 12(b)(1) and 12(b)6 Motion to Dismiss Plaintiffs' First Amended Complaint by Rick Perry. (Attachments: #1 Proposed Order) (Schenck, David) (Entered: 07/14/2011)
	* * *	
7/18/2011	49	RESPONSE to Motion, filed by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus, re 45

		MOTION to Extend Scheduling Order Deadlines regarding filing of expert reports filed by Consol Plaintiff Mexican American Legislative Caucus, Texas House of Representatives, 41 MOTION to Extend Scheduling Order Deadlines filed by Consol Plaintiff Joey Cardenas, Consol Plaintiff Jose Olivares, Consol Plaintiff Tomacita Olivares, Consol Plaintiff Emelda Menendez, Consol Plaintiff Texas Latino Redistricting Task Force, Consol Plaintiff Alejandro Ortiz, Consol Plaintiff Alex Jimenez, Consol Plaintiff Rebecca Ortiz (Schenck, David) (Entered: 07/18/2011)
07/19/2011	50	AMENDED COMPLAINT Plaintiff MALC's Second Amended Complaint against Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus amending, filed by Mexican American Legislative Caucus, Texas House of Representatives. (Garza, Jose) (Entered: 07/19/2011)
* * *		
07/19/2011	52	Unopposed MOTION for Leave to File Plaintiffs' Third

		Amended Complaint by Harold Dutton, Jr, Shannon Perez, Gregory Tamez. (Attachments: #1 Proposed Order) (Richards, David) (Entered: 07/19/2011)
07/19/2011	53	AMENDED COMPLAINT against Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus amending, filed by Gregory Tamez, Harold Dutton, Jr, Shannon Perez, Nancy Hall, Dorothy DeBose, Carmen Rodriguez, Sergio Salinas, Rudolfo Ortiz. (Richards, David) (Entered: 07/19/2011)
		* * *
07/19/2011	55	CROSSCLAIM against Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus, filed by Texas Democratic Party. (Dunn, Chad) (Entered: 07/19/2011)
		* * *
07/21/2011	63	ORDER of Consolidation – consolidating this case with SA-11-CA-361, SA-11-CA-490 and SA-11-CA-592. Signed by Judge Orlando L. Garcia. (ga) (Entered: 07/22/2011)
		* * *
07/25/2011	67	ORDER DENYING 39 Motion

		to Dismiss; DENYING 41 Motion to Extend Scheduling Order Deadlines; GRANTING 52 Motion for Leave to File; DENYING 56 Motion; GRANTING 58 Motion to Appear Pro Hac Vice. Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order.; GRANTING 59 Motion to Amend Complaint; GRANTING 60 Motion to Intervene; GRANTING 61 Motion to Intervene; GRANTING 64 Motion to Intervene; DENYING 20 Motion to Dismiss Signed by Judge Orlando L. Garcia; GRANTING 57 Motion to Appear Pro Hac Vice. (rf) Modified on 7/26/2011, to edit text to reflect doc #57 was ruled on (rf). (Entered: 07/26/2011)
07/25/2011	68	SECOND AMENDED COMPLAINT against Hope Andrade, Rick Perry filed by Texas Latino Redistricting Task Force, Alex Jimenez, Emelda Menendez, Tomacita Olivares, Alejandro Ortiz, Joey Cardenas,

		Rebecca Ortiz, Jose Olivares, Armando Cortez, Socorro Ramos, Gregorio Benito Palomino, Florinda Chavez, Cynthia Valadez, Cesar Eduardo Yevenes, Sergio Coronado, Gilberto Torres, Renato De Los Santos. (tm) (Entered: 07/26/2011)
07/25/2011	69	PLAINTIFF–INTERVENORS' AMENDED COMPLAINT against Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus amending, filed by Bill Lawson, Juanita Wallace, Texas State Conference of NAACP Branches, Howard Jefferson. (tm) (Entered: 07/26/2011)
07/25/2011	70	Intervenor COMPLAINT, filed by Texas Legislative Black Caucus against State of Texas, Rick Perry, David Dewhurst, Joe Strauss, Hope Andrade. (tm) (Entered: 07/26/2011)
07/25/2011	71	Intervenor COMPLAINT, filed by Alexander Green, Sheila Jackson–Lee, Eddie Bernice Johnson against State of Texas, Rick Perry, David Dewhurst, Joe Strauss, Hope Andrade. (tm) (Entered: 07/26/2011)
07/26/2011	72	CONSOLIDATION AND

		SCHEDULING ORDER: Member case SA-11-CV-615 consolidated with LEAD CASE SA-11-CA-360. For parties in Morris claim only deadline for Rule 26(f) conference is 7/29/11 and deadline for initial disclosures and motions to amend or supplement pleadings or join additional parties is 8/1/11. All other deadlines in the current scheduling order 51, 66 shall govern. Signed by Judge Orlando L. Garcia. (tm) (Entered: 07/27/2011)
	* * *	
07/27/2011	75	State Defendants' ANSWER to Complaint by LULAC Plaintiff-Intervenor by David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) Modified on 7/28/2011, to correct filers (rf). (Entered: 07/27/2011)
07/27/2011	76	CONSOLIDATION AND SCHEDULING ORDER - consolidating this case with SA-11-CA-635 (Amended Pleadings and Joinder of Parties due by 8/1/2011, Discovery due by 8/17/2011, Dispositive Motions due by 8/17/2011, Pretrial Conference set for 9/2/2011 9:30 AM before Judge

		Orlando L. Garcia, Bench Trial set for 9/6/2011 9:30 AM before Judge Orlando L. Garcia.) Signed by Judge Orlando L. Garcia. (ga) (Entered: 07/27/2011)
		* * *
07/27/2011	78	AMENDED THIRD PARTY COMPLAINT against Rick Perry, State of Texas amending, filed by LULAC.(Vera, Luis) Modified on 7/28/2011, to edit text (rf). (Entered: 07/27/2011)
		* * *
07/29/2011	87	Response in Opposition to Motion, filed by Howard Jefferson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace, re 62 MOTION for Protective Order filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst filed Jointly by NAACP, Lawson, Wallace and Jefferson (Notzon, Robert) (Entered: 07/29/2011)
07/29/2011	88	Response in Opposition to Motion, filed by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex

		Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes, re 62 MOTION for Protective Order filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Couto, Rebecca) (Entered: 07/29/2011)
	* * *	
08/01/2011	92	CORRECTED EXPEDITED AGREED JOINT MOTION OF ALL PARTIES TO AMEND SCHEDULING ORDER by Eliza Alvarado, Hope Andrade, Hope Andrade, Hope Andrade, Nina Jo Baker, Joey Cardenas, Florinda Chavez, City of Austin, Sergio Coronado, Armando Cortez, Renato De Los Santos, Dorothy DeBose, David Dewhurst, David Dewhurst, Harold Dutton, Jr, Bruce Elfant, David Gonzalez, Alexander Green, Nancy Hall, Jane Hamilton, Sheila

		Jackson–Lee, Howard Jefferson, John Jenkins, Alex Jimenez, Eddie Bernice Johnson, Lyman King, LULAC, Bill Lawson, Betty F *Lopez*, Josey Martinez, Emelda Menendez, Mexican American Legislative Caucus, Texas House of Representatives, John T Morris, Steve Munisteri, Romeo Munoz, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Rudolfo Ortiz, Gregorio Benito Palomino, Balakumar Pandian, Shannon Perez, Rick Perry, Rick Perry, Margarita V Quesada, Socorro Ramos, Boyd Richie, Carmen Rodriguez, Eddie Rodriguez, Sergio Salinas, Beatrice Saloma, Alex Serna, Sandra Serna, Lionor Sorola–Pohlman, State of Texas, Joe Straus, Joe Strauss, Gregory Tamez, Texas Democratic Party, Texas Latino Redistricting Task Force, Texas Legislative Black Caucus, Texas State Conference of NAACP Branches, Gilberto Torres, Travis County, US Congressman Henry Cuellar, Cynthia Valadez, Juanita Valdez–Cox, Marc Veasey, Juanita Wallace, Milton Gerard

		Washington, Cesar Eduardo Yevenes. (Attachments: #1 Proposed Order) (tm) (Entered: 08/01/2011)
		* * *
08/01/2011	95	First Amended Intervenor COMPLAINT against State of Texas, Rick Perry, David Dewhurst, Joe Strauss, Hope Andrade, filed by Texas Legislative Black Caucus. (tm) (Entered: 08/01/2011)
		* * *
08/02/2011	105	FIRST AMENDED COMPLAINT against Hope Andrade, Rick Perry, filed by Lyman King, Margarita V Quesada, Jane Hamilton, Romeo Munoz, John Jenkins, Marc Veasey, Jamaal R. Smith, Debbie Allen, Sandra Puente, Kathleen Maria Shaw. (tm) (Entered: 08/02/2011)
		* * *
08/02/2011	110	ANSWER to 50 Amended Complaint by David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) Modified on 8/3/2011, to remove filer (rf). (Entered: 08/02/2011)
		* * *
08/08/2011	127	MOTION to Stay Case and to Postpone Trial by Debbie Allen,

		Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey. (Attachments: #1 Proposed Order) (Hebert, J.) (Entered: 08/08/2011)
* * *		
08/08/2011	131	ANSWER to 53 Amended Complaint, Third by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) (Entered: 08/08/2011)
08/08/2011	132	ANSWER to 68 Amended Complaint, Second by Hope Andrade, Rick Perry. (Schenck, David) (Entered: 08/08/2011)
08/08/2011	133	ANSWER to Complaint First Amended (1:11cv451–LY–JES–OLG; Document No. 23) by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) (Entered: 08/08/2011)
* * *		
08/10/2011	167	ANSWER to Complaint (Cross) of Texas Democractic Party and Boyd Richie by Hope Andrade, Rick Perry. (Schenck, David) (Entered: 08/10/2011)

* * *		
08/10/2011	170	Response in Opposition to Motion, filed by Steve Munisteri, re 127 MOTION to Stay Case and to Postpone Trial filed by Consol Plaintiff John Jenkins, Defendant Lyman King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita V Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen Maria Shaw, Plaintiff Jamaal R. Smith (Reilly, Frank) (Entered: 08/10/2011)
08/10/2011	171	RESPONSE in Support, filed by Debbie Allen, Jane Hamilton, John Jenkins, Lyman King, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey, re 127 MOTION to Stay Case and to Postpone Trial filed by Consol Plaintiff John Jenkins, Defendant Lyman King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita V Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen

		Maria Shaw, Plaintiff Jamaal R. Smith Supplemental Memorandum (Hebert, J.) (Entered: 08/10/2011)
		* * *
08/10/2011	174	RESPONSE to Motion, filed by Dorothy DeBose, Harold Dutton, Jr, Nancy Hall, Rudolfo Ortiz, Shannon Perez, Carmen Rodriguez, Sergio Salinas, Gregory Tamez, re 127 MOTION to Stay Case and to Postpone Trial filed by Consol Plaintiff John Jenkins, Defendant Lyman King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita V Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen Maria Shaw, Plaintiff Jamaal R. Smith (Richards, David) (Entered: 08/10/2011)
		* * *
08/10/2011	177	RESPONSE in Support, filed by Howard Jefferson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace, re 127 MOTION to Stay Case and to Postpone Trial filed by Consol Plaintiff John Jenkins, Defendant Lyman

		King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita V Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen Maria Shaw, Plaintiff Jamaal R. Smith (Riggs, Allison) (Entered: 08/10/2011)
* * *		
08/10/2011	179	Response in Opposition to Motion, filed by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus, re 127 MOTION to Stay Case and to Postpone Trial filed by Consol Plaintiff John Jenkins, Defendant Lyman King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita V Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen Maria Shaw, Plaintiff Jamaal R. Smith (Schenck, David) (Entered: 08/10/2011)
08/10/2011	180	Response in Opposition to Motion, filed by Mexican American Legislative Caucus, Texas House of Representatives, re 127 MOTION to Stay Case and to Postpone Trial filed by

		Consol Plaintiff John Jenkins, Defendant Lyman King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita V Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen Maria Shaw, Plaintiff Jamaal R. Smith (Attachments: #1 Proposed Order)(Garza, Jose) (Entered: 08/10/2011)
* * *		
08/10/2011	183	Response in Opposition to Motion, filed by LULAC, re 127 MOTION to Stay Case and to Postpone Trial filed by Consol Plaintiff John Jenkins, Defendant Lyman King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita V Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen Maria Shaw, Plaintiff Jamaal R. Smith (Vera, Luis) (Entered: 08/10/2011)
08/10/2011	184	RESPONSE to Motion, filed by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares,

		Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes, re 127 MOTION to Stay Case and to Postpone Trial filed by Consol Plaintiff John Jenkins, Defendant Lyman King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen Maria Shaw, Plaintiff Jamaal R. Smith (Couto, Rebecca) (Entered: 08/10/2011)
* * *		
08/11/2011	187	ORDER DENYING 127 Motion to Stay Case. Signed by Judge Orlando L. Garcia. (tm) (Entered: 08/11/2011)
08/11/2011	188	ANSWER to 78 Amended Third Party Complaint by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) (Entered: 08/11/2011)
* * *		

08/15/2011	192	ANSWER to Complaint Amended (SA-11-CA-615-OLG-JES-XR , Doc. 7 - 6/27/2011) by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) (Entered: 08/15/2011)
08/15/2011	193	ANSWER to 71 Intervenor Complaint by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) (Entered: 08/15/2011)
08/15/2011	194	ANSWER to 69 Amended Complaint by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) (Entered: 08/15/2011)
08/15/2011	195	ANSWER to 105 Amended Complaint by Hope Andrade, Rick Perry. (Schenck, David) (Entered: 08/15/2011)
* * *		
08/17/2011	209	MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Attachments: #1 Proposed

		Order, #2 Exhibit A, #3 Exhibit B, #4 Exhibit C, #5 Exhibit D, #6 Exhibit E, #7 Exhibit F, #8 Exhibit G, #9 Exhibit H, #10 Exhibit I, #11 Exhibit J) (Schenck, David). Added MOTION for Judgment on the Pleadings on 8/18/2011 (rf). (Entered: 08/17/2011)
08/17/2011	210	MOTION for Partial Summary Judgment and Supporting Memorandum of Law by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Attachments: #1 Proposed Order, #2 Proposed Order, #3 Proposed Order) (Schenck, David) (Entered: 08/17/2011)
* * *		
08/18/2011	217	ORDER directing Plaintiffs to file a response to 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Hope Andrade, State of Texas, Joe Straus, Rick Perry, David Dewhurst and 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Hope Andrade,

		State of Texas, Joe Straus, Rick Perry, David Dewhurst no later than August 23, 2011 at 3:00 pm and Defendants must reply, if any, no later than August 24, 2011 at the close of business day. Signed by Judge Orlando L. Garcia. (tm) (Entered: 08/18/2011)
		* * *
08/22/2011	222	COMPLAINT in Intervention (Filing fee $350 receipt number 0542-3876435). No Summons requested at this time, filed by US Congressman Henry Cuellar. (Rios, Rolando) (Entered: 08/22/2011)
		* * *
08/23/2011	225	Response in Opposition to Motion, filed by Eliza Alvarado, Nina Jo Baker, City of Austin, Bruce Elfant, David Gonzalez, Betty F *Lopez*, Josey Martinez, Eddie Rodriguez, Beatrice Saloma, Alex Serna, Sandra Serna, Lionor Sorola-Pohlman, Travis County, Juanita Valdez-Cox, Milton Gerard Washington, re 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the

		Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Proposed Order) (McConnico, Stephen) (Entered: 08/23/2011)
08/23/2011	226	Response in Opposition to Motion, filed by Dorothy DeBose, Harold Dutton, Jr, Nancy Hall, Rudolfo Ortiz, Shannon Perez, Carmen Rodriguez, Sergio Salinas, Gregory Tamez, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst, 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Exhibit 1, #2

		Exhibit 2, #3 Exhibit 3, #4 Exhibit 4, #5 Exhibit 5, #6 Exhibit 6, #7 Exhibit 7, #8 Exhibit 8, #9 Proposed Order, #10 Proposed Order) (Richards, David) (Entered: 08/23/2011)
08/23/2011	227	Response in Opposition to Motion, filed by Dorothy DeBose, Harold Dutton, Jr, Nancy Hall, Rudolfo Ortiz, Shannon Perez, Carmen Rodriguez, Sergio Salinas, Gregory Tamez, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst, 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst CORRECTED (Attachments: #1 Exhibit 1, #2 Exhibit 2, #3 Exhibit 3, #4 Exhibit 4, #5

		Exhibit 5, #6 Exhibit 6, #7 Exhibit 7, #8 Exhibit 8, #9 Proposed Order, #10 Proposed Order) (Richards, David) (Entered: 08/23/2011)
* * *		
08/23/2011	229	RESPONSE to Motion, filed by Eliza Alvarado, Nina Jo Baker, City of Austin, Bruce Elfant, David Gonzalez, Betty F *Lopez*, Josey Martinez, Eddie Rodriguez, Beatrice Saloma, Alex Serna, Sandra Serna, Lionor Sorola–Pohlman, Travis County, Juanita Valdez–Cox, Milton Gerard Washington, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Exhibit, #2 Proposed Order) (McConnico, Stephen) (Entered: 08/23/2011)
08/23/2011	230	Response in Opposition to Motion, filed by US Congressman Henry Cuellar, re 9 MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim Upon Which Relief May

		Be Granted filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Rios, Rolando) (Entered: 08/23/2011)
08/23/2011	231	Memorandum in Opposition to Motion, filed by Debbie Allen, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Boyd Richie, Kathleen Maria Shaw, Jamaal R. Smith, Texas Democratic Party, Marc Veasey, re 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Hebert, J.) (Entered: 08/23/2011)
08/23/2011	232	Response in Opposition to Motion, filed by Alexander Green, Sheila Jackson-Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace, re 210 MOTION for

		Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst, 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 SEALED Exhibit 1 , #2 SEALED Exhibit 2, #3 SEALED Exhibit 3, #4 SEALED Exhibit 4, #5 SEALED Exhibit 5, #6 Exhibit 6, #7 Exhibit 7, #8 Exhibit 8, #9 Exhibit 9, #10 Exhibit 10, #11 Exhibit 11, #12 Exhibit 13, #13 Exhibit 14, #14 Exhibit 15, #15 Exhibit 16, #16 Exhibit 17, #17 Exhibit 18, #18 Exhibit 19, #19 Exhibit 12) (Notzon, Robert) Modified on 8/23/2011, to SEAL exhibits 1–5 per counsel's request (rf). (Entered: 08/23/2011)
08/23/2011	233	Memorandum in Opposition to

		Motion, filed by Debbie Allen, Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Appendix) (Hebert, J.) (Entered: 08/23/2011)
08/23/2011	234	RESPONSE to Motion, filed by Joey Cardenas, Florinda Chavez, Sergio Coronado, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes, re 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the

		Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Exhibit 1, #2 Proposed Order) (Perales, Nina) (Entered: 08/23/2011)
* * *		
08/23/2011	236	Response in Opposition to Motion, filed by Mexican American Legislative Caucus, Texas House of Representatives, re 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Proposed Order) (Garza, Jose) (Entered: 08/23/2011)
08/23/2011	237	Response in Opposition to Motion, filed by Mexican American Legislative Caucus, Texas House of Representatives, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope

		Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Proposed Order) (Garza, Jose) (Entered: 08/23/2011)
		* * *
08/23/2011	239	Response in Opposition to Motion, filed by LULAC, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst, 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Affidavit) (Vera, Luis) (Entered: 08/23/2011)
08/23/2011	240	RESPONSE to Motion, filed by John T Morris, re 209 MOTION to Dismiss for Lack of

		Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst CORRECTED COPY (Morris, John) (Entered: 08/23/2011)
* * *		
08/23/2011	242	RESPONSE to Motion, filed by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst for Partial Summary Judgment (Attachments: #1 Affidavit in support, #2 Exhibit 1 and 2, #3

		Exhibit 3, #4 Exhibit 4, #5 Exhibit 5, #6 Exhibit 5–6, #7 Exhibit 6 cont, #8 Exhibit 7–12, #9 Exhibit 13–28, #10 Exhibit 29–33, #11 Exhibit 34–37, #12 Exhibit 38, #13 Exhibit 39 part 1, #14 Exhibit 39–40, #15 Exhibit 40–1, #16 Exhibit 40–2, #17 Exhibit 40–3, #18 Exhibit 40–4, #19 Exhibit 40–5, #20 Exhibit 40–6, #21 Exhibit 40–7, #22 Exhibit 40–8, #23 Exhibit 40–9, #24 Exhibit 40–41, #25 Exhibit 41–1, #26 Exhibit 41–42, #27 Exhibit 42 cont) (Perales, Nina) (Entered: 08/23/2011)
* * *		
08/24/2011	249	REPLY to Response to Motion, filed by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus, re 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Schenck, David) (Entered: 08/24/2011)

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08/24/2011	251	REPLY to Response to Motion, filed by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Schenck, David) (Entered: 08/24/2011)
* * *		
08/29/2011	258	Memorandum in Opposition to Motion, filed by Mexican American Legislative Caucus, Texas House of Representatives, re 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst MALC Surreply (Attachments: #1 Exhibit exhibit 1, #2 Exhibit exhibit 1 continued, #3 Exhibit exhibit 2, #4 Exhibit exhibit 3,

		#5 Exhibit exhibit 4) (Garza, Jose) (Entered: 08/29/2011)
		* * *
08/31/2011	273	MOTION to Amend Complaint and order by John T Morris. (Attachments: #1 Amended Complaint) (Morris, John) (Entered: 08/31/2011)
08/31/2011	274	TRIAL BRIEF on the merits by John T Morris. (Morris, John) (Entered: 08/31/2011)
08/31/2011	275	ORDER GRANTING IN PART on the Fifteenth Amendment claims, and such claims are DISMISSED as a matter of law. The motion is otherwise DENIED, and the remaining claims shall proceed to trial 210 Motion for Partial Summary Judgment. Signed by Judge Orlando L. Garcia. (rg) (Entered: 08/31/2011)
08/31/2011	276	ORDER regarding pretrial conference and trial on the merits. Signed by Judge Orlando L. Garcia. (tm) (Entered: 08/31/2011)
		* * *
09/01/2011	280	MOTION for Reconsideration re 275 Order on Motion for Partial Summary Judgment, Regarding Dismissal of Fifteenth Amendment claims by Debbie

		Allen, Nancy Hall, Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey. (Attachments: #1 Proposed Order) (Hebert, J.) (Entered: 09/01/2011)
	* * *	
09/02/2011	285	ORDER GRANTING IN PART AND DENYING IN PART 209 Motion to Dismiss for Lack of Jurisdiction, and in the alternative, Motion for Judgment on the Pleadings. Signed by Judge Orlando L. Garcia. (tm) (Entered: 09/02/2011)
09/02/2011	286	ORDER DENYING 280 Motion for Reconsideration; GRANTING 271 Motion to Withdraw as Attorney; DENYING 273 Motion to Amend Complaint as moot; 263 Motion to Unseal Document is WITHDRAWN at this time. Signed by Judge Orlando L. Garcia. (tm) (Entered: 09/02/2011)
	* * *	
09/06/2011	288	TRIAL BRIEF Joint by Alexander Green, Sheila

		Jackson–Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace. (Riggs, Allison) (Entered: 09/06/2011)
		* * *
09/06/2011	290	ANSWER to Complaint by Rick Perry, State of Texas. (Schenck, David) (Entered: 09/06/2011)
		* * *
09/06/2011	294	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Jerry E. Smith, Judge Xavier Rodriguez: Bench Trial begun on 9/6/2011 (Minute entry documents are not available electronically.), Bench Trial held on 9/6/2011 (Minute entry documents are not available electronically.). (Court Reporter Karl Myers, Chris Poage, Jerry Anderson.) (tm) (Entered: 09/07/2011)
		* * *
09/07/2011	297	Minute Entry for proceedings held before Judge Orlando L. Garcia, Xavier Rodriguez, Jerry E. Smith: Bench Trial held on 9/7/2011 (Minute entry documents are not available electronically.). (Court Reporter Chris Poage, Karl Meyers, Jerry

		Anderson.) (tm) Modified on 9/8/2011 to add additional Judge information (tm). (Entered: 09/08/2011)
		* * *
09/08/2011	299	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Xavier Rodriguez, Judge Jerry E. Smith: Bench Trial held on 9/8/2011 (Minute entry documents are not available electronically.). (Court Reporter Chris Poage, Karl Meyers, Jerry Anderson.) (tm) (Entered: 09/09/2011)
		* * *
09/09/2011	301	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Jerry E. Smith, Judge Xavier Rodriguez: Bench Trial held on 9/9/2011 (Minute entry documents are not available electronically.). (Court Reporter Karl Myers, Chris Anderson.) (tm) (Entered: 09/09/2011)
09/10/2011	302	STIPULATION *OF FACTS* by Debbie Allen, Nancy Hall, Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, State of Texas, Marc

		Veasey. (Hebert, J.) (Entered: 09/10/2011)
* * *		
09/10/2011	305	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Jerry E. Smith and Judge Xavier Rodriguez: Bench Trial held on 9/10/2011 (Minute entry documents are not available electronically.). (Court Reporter Karl Meyers, Jerry Anderson.) (tm) (Entered: 09/12/2011)
* * *		
09/12/2011	309	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Jerry E. Smith, Judge Xavier Rodriguez: Bench Trial held on 9/12/2011 (Minute entry documents are not available electronically.). (Court Reporter Karl Myers, Chris Poage, Jerry Anderson.) (rf) (Entered: 09/13/2011)
09/13/2011	310	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Jerry E. Smith, Judge Xavier Rodriguez: Bench Trial held on 9/13/2011 (Minute entry documents are not available electronically.). (Court Reporter Karl Meyers, Jerry Anderson.) (tm) (Entered:

		09/13/2011)
09/14/2011	311	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Jerry E. Smith, Judge Xavier Rodriguez: Bench Trial held on 9/14/2011 (Minute entry documents are not available electronically.). (Court Reporter Chris Poage, Karl Meyers,.) (tm) (Entered: 09/14/2011)
* * *		
09/16/2011	336	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Jerry Smith, Judge Xavier Rodriguez: Bench Trial completed on 9/16/2011 (Minute entry documents are not available electronically.) All Offers of Proof and Declarations submitted by Plaintiffs are due no later than Monday, September 19, 2011. Simultaneous trial briefs due by 6:00 p.m. on Friday, October 7, 2011. Simultaneous replies due by 6:00 p.m. on Friday, October 21, 2011. (Court Reporter Chris Poage, Karl Meyers, Jerry Anderson.) (tm) Modified judge information on 9/19/2011 (tm). (Entered: 09/19/2011)
* * *		

09/23/2011	369	ADVISORY TO THE COURT by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus re Discovery Schedule in Section 5 proceeding. (Attachments: #1 Exhibit A) (Schenck, David) (Entered: 09/23/2011)
* * *		
09/29/2011	380	ORDER ENJOINING THE IMPLEMENTATION OF VOTING CHANGES: GRANTING 375 Motion for TRO. Signed by Judge Orlando L. Garcia. (tm) (Entered: 09/29/2011)
* * *		
09/30/2011	384	MOTION for Reconsideration re 285 Order on Motion to Dismiss/Lack of Jurisdiction, Order on Motion for Judgment on the Pleadings by Boyd Richie, Texas Democratic Party. (Attachments: #1 Proposed Order) (Dunn, Chad) (Entered: 09/30/2011)
09/30/2011	385	ORDER entering schedule to run simultaneously with any other deadlines in this case, with the goal of implementing an interim plan in the event it becomes necessary. Signed by Judge Orlando L. Garcia. (tm)

		(Entered: 09/30/2011)
	* * *	
10/03/2011	388	ORDER that the 384 MOTION for Reconsideration re 285 Order on Motion to Dismiss/Lack of Jurisdiction, Order on Motion for Judgment on the Pleadings filed by Texas Democratic Party, Boyd Richie and 386 MOTION for Reconsideration (Joined Texas Democratic Party and Boyd Richie) filed by John T Morris are under advisement until further notice while the litigation proceeds. Signed by Judge Orlando L. Garcia. (tm,) (Entered: 10/03/2011)
	* * *	
10/04/2011	391	AMENDED ORDER implementing schedule to run simultaneously with any other deadlines in this case, with the goal of implementing an interim plan in the event it becomes necessary. Signed by Judge Orlando L. Garcia. (tm) (Entered: 10/04/2011)
	* * *	
10/04/2011	394	ORDER that the parties' post trial briefs due October 7, 2011, are not exceed fifty (50) pages. Signed by Judge Orlando L.

		Garcia. (tm) (Entered: 10/04/2011)
		* * *
10/07/2011	405	ADVISORY TO THE COURT by Hope Andrade, Rick Perry, State of Texas REGARDING INTERIM REAPPORTIONMENT. (Schenck, David) (Entered: 10/07/2011)
10/07/2011	406	TRIAL BRIEF (Joint) by Alexander Green, Sheila Jackson–Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace. (Riggs, Allison) (Entered: 10/07/2011)
		* * *
10/07/2011	408	Proposed Findings of Fact by Alexander Green, Sheila Jackson–Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace (Joint). (Riggs, Allison) (Entered: 10/07/2011)
10/07/2011	409	BRIEF by Debbie Allen, Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey

		Post–Trial. (Hebert, J.) (Entered: 10/07/2011)
10/07/2011	410	BRIEF by 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, City of Austin Post–Trial Brief of Rodriguez Plaintiffs. (Hicks, Max) Modified on 10/11/2011, to add filers (rf). (Entered: 10/07/2011)
10/07/2011	411	TRIAL BRIEF Post Trial Brief by Hope Andrade, Rick Perry, State of Texas. (Attachments: #1 Appendix) (Schenck, David) (Entered: 10/07/2011)
10/07/2011	412	BRIEF by Mexican American Legislative Caucus, Texas House of Representatives post trial brief. (Garza, Jose) (Entered: 10/07/2011)
10/07/2011	413	Proposed Findings of Fact by Hope Andrade, Rick Perry, State of Texas Proposed Findings of Fact and Conclusions of Law. (Schenck, David) (Entered: 10/07/2011)
* * *		

10/08/2011	416	TRIAL BRIEF by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes. (Couto, Rebecca) (Entered: 10/08/2011)
10/11/2011	417	TRIAL BRIEF by LULAC. (Vera, Luis) (Entered: 10/11/2011)
10/11/2011	418	ORDER regarding appointment of technical advisors to the Court. Signed by Judge Orlando L. Garcia. (rf) (Entered: 10/11/2011)
* * *		
10/11/2011	424	BRIEF regarding 410 Brief, by Eliza Alvarado, Nina Jo Baker, City of Austin, Bruce Elfant, David Gonzalez, Betty F *Lopez*, Josey Martinez, Balakumar Pandian, Eddie Rodriguez, Beatrice Saloma, Alex Serna, Sandra Serna, Lionor Sorola-Pohlman, Travis

		County, Juanita Valdez–Cox, Milton Gerard Washington (Corrected). (Hicks, Max) (Entered: 10/11/2011)
		* * *
10/17/2011	436	ADVISORY TO THE COURT by Hope Andrade, Rick Perry, State of Texas ADVISORY REGARDING INTERIM MAP. (Schenck, David) (Entered: 10/17/2011)
10/17/2011	437	RESPONSE Cong Cuellar Propose Interim Plan to 391 Order by US Congressman Henry Cuellar. (Attachments: #1 Exhibit, #2 Exhibit) (Rios, Rolando) (Entered: 10/17/2011)
10/17/2011	438	STATEMENT OF ISSUES Rodriguez Plaintiffs' Submission on Interim Court–Ordered Plan Issues by Eliza Alvarado, Nina Jo Baker, City of Austin, Bruce Elfant, David Gonzalez, Betty F *Lopez*, Josey Martinez, Balakumar Pandian, Eddie Rodriguez, Beatrice Saloma, Alex Serna, Sandra Serna, Lionor Sorola–Pohlman, Travis County, Juanita Valdez–Cox, Milton Gerard Washington. (Attachments: #1 Exhibit, #2 Exhibit, #3 Exhibit, #4 Exhibit,

		#5 Exhibit, #6 Exhibit, #8 Exhibit, #9 Exhibit) (Hicks, Max) (Entered: 10/17/2011)
10/17/2011	439	ADVISORY TO THE COURT by Debbie Allen, Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey Proposing Remidial Congressional Redistricting Plan. (Attachments: #1 Appendix, #2 Appendix, #3 Appendix) (Hebert, J.) (Entered: 10/17/2011)
10/17/2011	440	ADVISORY TO THE COURT by Mexican American Legislative Caucus, Texas House of Representatives proposed interim court plans. (Attachments: #1 Exhibit, #2 Exhibit, #3 Exhibit, #4 Exhibit, #5 Exhibit, #6 Exhibit, #7 Exhibit) (Garza, Jose) (Entered: 10/17/2011)
10/17/2011	441	ADVISORY TO THE COURT by Alexander Green, Sheila Jackson-Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace On Interim Maps.

		(Attachments: #1 Exhibit Identification of issues in Section 5 case) (Notzon, Robert) (Entered: 10/17/2011)
		* * *
10/17/2011	444	ADVISORY TO THE COURT by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes with respect to Interim Plans. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C, #4 Exhibit D, #5 Exhibit E, #6 Exhibit F, #7 Exhibit G, #8 Exhibit H) (Couto, Rebecca) (Entered: 10/18/2011)
		* * *
10/21/2011	455	BRIEF regarding 411 Trial Brief by Dorothy DeBose, Harold Dutton, Jr, Nancy Hall, Rudolfo Ortiz, Shannon Perez, Carmen Rodriguez, Sergio Salinas, Gregory Tamez Reply Brief. (Attachments: #1 Exhibit)

		(Richards, David) (Entered: 10/21/2011)
10/21/2011	456	TRIAL BRIEF Reply to Defendants' Trial Brief 411 by Alexander Green, Sheila Jackson–Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace. (Riggs, Allison) (Entered: 10/21/2011)
10/21/2011	457	RESPONSE to Plaintiffs' Post–Trial Briefs by Hope Andrade, Rick Perry, State of Texas. (Schenck, David) (Entered: 10/21/2011)
* * *		
10/21/2011	459	BRIEF by Mexican American Legislative Caucus, Texas House of Representatives Reply to State's Post Trial Brief. (Garza, Jose) (Entered: 10/21/2011)
* * *		
10/24/2011	463	ADVISORY TO THE COURT by US Congressman Henry Cuellar Objections to Proposed Interim Plans. (Rios, Rolando) (Entered: 10/24/2011)
10/24/2011	464	RESPONSE to Proposed Interim Remedial Redistricting Plans by Joey Cardenas, Florinda Chavez, Sergio

		Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes. (Perales, Nina) (Entered: 10/24/2011)
		* * *
10/24/2011	466	RESPONSE to Interim Plans by Alexander Green, Sheila Jackson-Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace. (Riggs, Allison) (Entered: 10/24/2011)
10/24/2011	467	RESPONSE of Quesada Plaintiffs to State of Texas' Proposed Interim Plan to 436 Advisory to the Court by Debbie Allen, Nancy Hall, Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey. (Attachments: #1 Exhibit DOJ Letter to state of Texas) (Hebert, J.) (Entered:

		10/24/2011)
10/24/2011	468	Miscellaneous Objection to Proposed Interim Plans by Hope Andrade, Rick Perry, State of Texas. (Attachments: #1 Exhibit, #2 Exhibit) (Schenck, David) (Entered: 10/24/2011)
* * *		
10/28/2011	474	ADVISORY TO THE COURT by Mexican American Legislative Caucus, Texas House of Representatives joint advisory of the parties. (Garza, Jose) (Entered: 10/28/2011)
10/28/2011	475	ADVISORY TO THE COURT by OF AMERICA UNITED STATES regarding Statement of Interest Under Section 5 of the Voting Rights Act of 1965. (Attachments: #1 Exhibit Memorandum of Points and Authorities in Support of its Opposition to Plaintiff's Motion for Summary Judgment, #2 Exhibit Statement of Genuine Issues) (Sitton, Jaye) (Entered: 10/28/2011)
* * *		
10/30/2011	477	NOTICE of Filing of Supplemental Proposed Interim Plan by Honorable Francisco "QuicoCanseco, US Congressman Henry Cuellar

		(Attachments: #1 Exhibit 1, #2 Exhibit 2, #3 Exhibit 3) (Gober, Christopher) (Entered: 10/30/2011)
		* * *
10/31/2011	479	Minute Entry for proceedings held before Judge Orlando L. Garcia, Jerry E. Smith, Xavier Rodriguez: Three–Judge Court Hearing held on 10/31/2011 (Minute entry documents are not available electronically.). (Court Reporter Karl Myers, Chris Poage.) (rf) (Entered: 11/01/2011)
11/01/2011	480	ORDER – proposed order(s) regarding election deadlines must be submitted to the Court by 10:00 a.m. on Friday, November 4, 2011. Signed by Judge Orlando L. Garcia. (rf) Modified on 11/1/2011, to edit text (rf). (Entered: 11/01/2011)
		* * *
11/03/2011	485	Minute Entry for proceedings held before Judge Orlando L. Garcia: Hearing on Interim Plans held on 11/3/2011. (Minute entry documents are not available electronically.). (Court Reporter Karl Myers, Chris Poage.) (rg) (Entered: 11/04/2011)

11/04/2011	486	ORDERED that for the 2012 elections to the Texas House of Representatives and Texas Senate a person must be a resident of the district the person seeks to represent from December 15, 2011 until the date of the General Election, and it is, It is further ORDERED that an incorrect precinct designation on an application for a place on the ballot shall not render the application invalid if the designation is corrected on or before December 19, 2011. An application for a place on the ballot for the office of precinct chair shall not be invalid if filed more than 90 days before the end of the filing period. ORDERED that for the 2012 elections for federal, state, county and local officers shall proceed as required under state and federal law except as provided for above. The State of Texas through the Secretary of State shall deliver an exact duplicate of this order to all election officials and county chairs, to the extent possible, within three days. The order shall also be posted by the

		Secretary of State on its website and the official election calendar as posted on the Secretary of State's website shall be updated to reflect the terms of this order. The political parties shall deliver this order and notice thereof to county party chairs without delay. Signed by Judge Orlando L. Garcia. (rg) (Entered: 11/04/2011)
	* * *	
11/07/2011	489	AMENDED ORDER. This amendment to the Court's Order 486 dated 11/4/11, makes only one correction to the date contained in subsection l. Signed by Judge Orlando L. Garcia. (rf) Modified on 11/7/2011, to edit text (rf). (Entered: 11/07/2011)
	* * *	
11/07/2011	504	ADVISORY TO THE COURT by OF AMERICA UNITED STATES Statement of Interest of the United States With Respect to Section 2 of the Voting Rights Act. (Attachments: #1 Exhibit, #2 Exhibit) (Sitton, Jaye) (Entered: 11/07/2011)
11/08/2011	505	ADVISORY TO THE COURT by Mexican American Legislative

		Caucus, Texas House of Representatives Regarding DC District Court Order Denying State's Motion for Summary Judgment. (Attachments: #1 Exhibit) (Garza, Jose) (Entered: 11/08/2011)
11/08/2011	506	ORDER (Setting Status Conference for 11/14/2011 08:00 AM before Judge Orlando L. Garcia to discuss the status of all proceedings in light of the D.C. Court's most recent ruling and any other matters relevant to the Court's drawing of interim plans under the deadlines currently in place.) Signed by Judge Orlando L. Garcia. (rg) (Entered: 11/08/2011)
11/10/2011	507	ORDER Cancelling Deadline – The status conference previously scheduled for Monday, November 14, 2011 is cancelled, but the Court will hold a status conference in the very near future. This decision is based on a majority of the panel. Circuit Judge Jerry Smith dissents from the decision to postpone the trial and status conference. Signed by Judge Orlando L. Garcia. (rg) (Entered: 11/10/2011)

11/10/2011	508	ADVISORY TO THE COURT by Hope Andrade, Rick Perry, State of Texas TO THE COURT REGARDING DEVIATION FROM EQUALIZED DISTRICT POPULATION IN INTERIM REDISTRICTING PLANS. (Attachments: #1 Exhibit) (Schenck, David) (Entered: 11/10/2011)
	* * *	
11/14/2011	512	RESPONSE to 508 Advisory to the Court by Dorothy DeBose, Harold Dutton, Jr, Nancy Hall, Rudolfo Ortiz, Shannon Perez, Carmen Rodriguez, Sergio Salinas, Gregory Tamez. (Attachments: #1 Exhibit) (Richards, David) (Entered: 11/14/2011)
11/15/2011	513	RESPONSE to Department of Justice's Brief on Interim Maps to 504 Advisory to the Court by Hope Andrade, Rick Perry, State of Texas. (Attachments: #1 Exhibit A – Report of Handley, #2 Exhibit B – Report of Alford, #3 Exhibit C – Depo of Handley, #4 Exhibit D – Depo of Alford – Section 5) (Schenck, David) (Entered: 11/15/2011)
11/15/2011	514	ADVISORY TO THE COURT by Jane Hamilton, John Jenkins,

		Lyman King, Romeo Munoz, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey Regarding Filings by the State Defendants and the United States. (Hebert, J.) (Entered: 11/15/2011)
* * *		
11/17/2011	516	NOTICE of Filing Of LULAC And NAACP Statewide Alternative Congressional Plan C–218 by LULAC (Vera, Luis) (Entered: 11/17/2011)
11/17/2011	517	ORDER the parties are ordered to access the proposed plans and file any comments and/or objections by 11/18/11. Signed by Judge Orlando L. Garcia. (rf) (Entered: 11/17/2011)
11/18/2011	518	RESPONSE to 517 Order by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes. (Perales, Nina)

		(Entered: 11/18/2011)
		* * *
11/18/2011	521	ADVISORY TO THE COURT by State of Texas Objections to Court's Proposed Interim House Plans. (Attachments: #1 Exhibit) (Schenck, David) (Entered: 11/18/2011)
		* * *
11/23/2011	526	ORDER The parties are ordered to access the proposed plans and file any comments and/or objections by noon on Friday, 11/25/11. Signed by Judge Orlando L. Garcia. (rf) (Entered: 11/23/2011)
		* * *
11/23/2011	528	ORDER regarding interim plan for the districts used to elect members in 2012 to the Texas House of Representatives.. Signed by Judge Orlando L. Garcia, Circuit Judge Jerry E. Smith, Judge Xavier Rodriguez. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C, #4 Exhibit D, #5 Exhibit E, #6 Exhibit F) (rf) (Entered: 11/23/2011)
11/23/2011	529	Opposed MOTION to Stay Implementation of Interim House Redistricting Plan by Hope Andrade, Rick Perry,

		State of Texas. (Attachments: #1 Proposed Order) (Schenck, David) (Entered: 11/23/2011)
11/25/2011	530	ADVISORY TO THE COURT by US Congressman Henry Cuellar Advisory on Proposed Interim Congressional Plan. (Rios, Rolando) (Entered: 11/25/2011)
11/25/2011	531	ADVISORY TO THE COURT by Alexander Green, Sheila Jackson–Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace. (Riggs, Allison) (Entered: 11/25/2011)
11/25/2011	532	ADVISORY TO THE COURT by Mexican American Legislative Caucus, Texas House of Representatives. (Garza, Jose) (Entered: 11/25/2011)
11/25/2011	533	ADVISORY TO THE COURT by Eliza Alvarado, Nina Jo Baker, City of Austin, Bruce Elfant, David Gonzalez, Betty F *Lopez*, Josey Martinez, Balakumar Pandian, Eddie Rodriguez, Beatrice Saloma, Alex Serna, Sandra Serna, Lionor Sorola–Pohlman, Travis County, Juanita Valdez–Cox, Milton Gerard Washington.

		(Hicks, Max) (Entered: 11/25/2011)
11/25/2011	534	ADVISORY TO THE COURT by Hope Andrade, Rick Perry, State of Texas Objections to the Court's Proposed Interim Congressional Plans. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C) (Schenck, David) (Entered: 11/25/2011)
11/25/2011	535	ADVISORY TO THE COURT by Honorable Francisco "QuicoCanseco. (Gober, Christopher) (Entered: 11/25/2011)
11/25/2011	536	ADVISORY TO THE COURT by Debbie Allen, Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey by Quesada Plaintiffs regarding court's proposed congressional plan. (Hebert, J.) (Entered: 11/25/2011)
11/25/2011	537	ADVISORY TO THE COURT by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares,

		Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes regarding Plan C220. (Couto, Rebecca) (Entered: 11/25/2011)
11/25/2011	538	ADVISORY TO THE COURT by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes Exhibit B to Dkt. 537. (Attachments: #1 Exhibit B to Dkt. 537) (Couto, Rebecca) (Entered: 11/25/2011)
11/25/2011	539	SUPPLEMENT to 534 Advisory to the Court DEFENDANTSAMENDED EXHIBIT A TO OBJECTIONS TO THE COURTS PROPOSED INTERIM CONGRESSIONAL PLANS by Hope Andrade, Rick

		Perry, State of Texas. (Attachments: #1 Exhibit) (Schenck, David) (Entered: 11/25/2011)
11/25/2011	540	ADVISORY TO THE COURT by LULAC re C220. (Vera, Luis) (Entered: 11/25/2011)
11/25/2011	541	ADVISORY TO THE COURT by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes Exhibits C, D &E to Dkt. 537. (Attachments: #1 Exhibit C–1, #2 Exhibit C–2, #3 Exhibit C–3, #4 Exhibit C–4, #5 Exhibit C–5, #6 Exhibit C–6, #7 Exhibit C–7, #8 Exhibit C–8, #9 Exhibit C–9, #10 Exhibit C–10, #11 Exhibit D, #12 Exhibit E) (Couto, Rebecca) (Entered: 11/25/2011)
11/25/2011	542	ADVISORY TO THE COURT by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los

		Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes Exhibit A to Dkt. 537. (Attachments: #1 Exhibit A–1, #2 Exhibit A–2, #3 Exhibit A–3, #4 Exhibit A–4, #5 Exhibit A–5) (Couto, Rebecca) (Entered: 11/25/2011)
11/25/2011	543	ORDER DENYING 529 Opposed MOTION to Stay Implementation of Interim House Redistricting Plan filed by Hope Andrade, State of Texas, Rick Perry. Signed by Judge Orlando L. Garcia, Circuit Judge Jerry E. Smith, Judge Xavier Rodriguez. (mo,) (Entered: 11/25/2011)
11/26/2011	544	ORDER adopting PLAN C220 as the interim plan for the districts used to elect members in 2012 to the United States House of Representatives. Signed by Judge Orlando L. Garcia. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C) (mo,) (Entered:

		11/26/2011)
11/27/2011	545	Opposed MOTION to Stay IMPLEMENTATION OF INTERIM CONGRESSIONAL REDISTRICTING PLAN by Hope Andrade, Rick Perry, State of Texas. (Attachments: #1 Proposed Order) (Schenck, David) (Entered: 11/27/2011)
11/27/2011	546	ORDER DENYING 545 Motion to Stay implementation of the court–drawn interim congressional redistricting plan pending appeal. Signed by Judge Orlando L. Garcia, Circuit Judge Jerry E. Smith, and Judge Xavier Rodriguez. (mo,) (Entered: 11/27/2011)
11/27/2011	547	Appeal of Order entered by District Judge 528 by Hope Andrade, Rick Perry, State of Texas. No filing fee submitted (Schenck, David) (Entered: 11/27/2011)
11/29/2011	548	Amended Appeal of Order entered by District Judge 543, 546 by Hope Andrade, Rick Perry, State of Texas. Amended Notice of Appeal No filing fee submitted (Schenck, David) (Entered: 11/29/2011)
12/02/2011	549	Supplemental Opinion Signed by Judge Orlando L. Garcia,

		Circuit Judge Jerry E. Smith, and Judge Xavier Rodriguez. (mo,) Modified on 12/2/2011 (mo,). (Entered: 12/02/2011)
		* * *
12/11/2011	552	MOTION to Confirm Sigle Primary for 2012 Elections by LULAC. (Vera, Luis) Modified on 12/12/2011, to edit text (rf). (Entered: 12/11/2011)
12/12/2011	553	Opposed MOTION to Stay Candidate Filing and Administrative Deadlines by Hope Andrade, Rick Perry, State of Texas. (Attachments: #1 Exhibit U.S. Supreme Court Order Granting Stay and Noting Probable Jurisdiction, #2 Proposed Order) (Schenck, David) (Entered: 12/12/2011)

RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS (San Antonio)

Civil Docket for Case #5:11-cv-00788-OLG-JES-XR

DAVIS, et al. v. *PERRY, et al.*

Date Filed	#	Docket Text
09/22/2011	1	COMPLAINT (Filing fee $350 receipt number 0542–3957870), filed by Sarah Joyner, Vicky Bargas, Pat Pangburn, Marc Veasey, Roy Brooks, Wendy Davis, Frances DeLeon, Dorothy DeBose. (Attachments: #1 Civil Cover Sheet) (Richards, David) (Entered: 09/22/2011)
* * *		
09/23/2011	4	ORDER appointing three judge panel to Judge Orlando L. Garcia, Judge Jerry E. Smith and Judge Xavier Rodriguez. Signed by Judge Orlando L. Garcia. (kh2) (Entered: 09/23/2011)
* * *		
09/28/2011	7	EXPEDITED SCHEDULING ORDER: Trial Before the Three Judge Panel set for 11/14/2011 8:00 AM. Pretrial Conference set for 11/10/2011 08:30 AM before Judge Orlando L. Garcia.

		Discovery due by 10/31/2011. Motions due by 11/2/2011. Signed by Judge Orlando L. Garcia. (rf) (Entered: 09/28/2011)
09/29/2011	8	ORDER ENJOINING THE IMPLEMENTATION OF VOTING CHANGES. Signed by Judge Orlando L. Garcia. (rf) (Entered: 09/29/2011)
* * *		
10/03/2011	10	ANSWER to 1 Complaint by Steve Munisteri. (Opiela, Eric) (Entered: 10/03/2011)
10/03/2011	11	MOTION to Dismiss Claims Pursuant to Rule 21 by Steve Munisteri. (Attachments: #1 Proposed Order)(Opiela, Eric) (Entered: 10/03/2011)
10/03/2011	12	ORDER Implementing Schedule. Signed by Judge Orlando L. Garcia. (tm) (Entered: 10/03/2011)
* * *		
10/03/2011	14	ANSWER to 1 Complaint by Hope Andrade, Rick Perry. (Schenck, David) (Entered: 10/03/2011)
10/04/2011	15	AMENDED ORDER re 12 Order. Signed by Judge Orlando L. Garcia. (rf) (Entered: 10/04/2011)
* * *		
10/07/2011	17	ADVISORY TO THE COURT by Hope Andrade, Rick Perry REGARDING INTERIM

		REAPPORTIONMENT. (Schenck, David) (Entered: 10/07/2011)
10/07/2011	18	BRIEF by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Sarah Joyner, Pat Pangburn, Marc Veasey on Remedy. (Hebert, J.) (Entered: 10/07/2011)
10/11/2011	19	ORDER regarding the appointment of technical advisors to the Court. Signed by Judge Orlando L. Garcia. (rf) (Entered: 10/11/2011)
		* * *
10/13/2011	25	ORDER the parties shall file a brief advisory to the Court within seven days. Signed by Judge Orlando L. Garcia. (rf) (Entered: 10/13/2011)
		* * *
10/17/2011	28	ADVISORY TO THE COURT by Hope Andrade, Rick Perry ADVISORY REGARDING INTERIM MAP. (Schenck, David) (Entered: 10/17/2011)
10/17/2011	29	ADVISORY TO THE COURT by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Sarah Joyner, Pat Pangburn, Marc Veasey Proposed Remedial Interim State Senate Plan. (Attachments: #1 Appendix, #2 Appendix) (Hebert, J.)

		(Entered: 10/17/2011)
* * *		
10/19/2011	33	ORDER Consolidating this case with SA11-CV-855. Signed by Judge Orlando L. Garcia. (rf) (Entered: 10/19/2011)
10/19/2011	34	ADVISORY TO THE COURT by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Sarah Joyner, Pat Pangburn, Marc Veasey on Laches. (Hebert, J.) (Entered: 10/19/2011)
10/19/2011	35	ADVISORY TO THE COURT by Hope Andrade, Rick Perry Advisory to the Court Regarding Laches. (Schenck, David) (Entered: 10/19/2011)
10/20/2011	36	REPLY to Response to Motion, filed by Steve Munisteri, re 11 MOTION to Dismiss Claims Pursuant to Rule 21 filed by Defendant Steve Munisteri (Opiela, Eric) (Entered: 10/20/2011)
10/20/2011	37	ADVISORY TO THE COURT by Steve Munisteri Regarding Laches. (Opiela, Eric) (Entered: 10/20/2011)
10/20/2011	38	AMENDED ANSWER to 1 Complaint by Hope Andrade, Rick Perry. (Schenck, David) (Entered: 10/20/2011)

* * *		
10/21/2011	40	MOTION to Dismiss and for Judgment on the Pleadings by Hope Andrade, Rick Perry, The State of Texas. (Attachments: #1 Proposed Order)(Schenck, David) (Entered: 10/21/2011)
10/24/2011	41	MOTION to Stay Case by Hope Andrade, Rick Perry, The State of Texas. (Attachments: #1 Proposed Order) (Schenck, David) (Entered: 10/24/2011)
10/24/2011	42	ORDER Plaintiffs are ordered to respond by 2:00 p.m. on 10/26/11, to 41 MOTION to Stay Case filed by Hope Andrade, Rick Perry, The State of Texas. Signed by Judge Orlando L. Garcia. (rf) (Entered: 10/24/2011)
10/24/2011	43	ORDER Plaintiffs are Ordered to respond by 3:00 p.m. on 10/30/11, to 40 MOTION to Dismiss filed by Hope Andrade, Rick Perry, The State of Texas. Signed by Judge Orlando L. Garcia. (rf) (Entered: 10/24/2011)
10/24/2011	44	RESPONSE of Plaintiffs to State of Texas Proposed Interim Plan to 28 Advisory to the Court by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Sarah Joyner, Pat Pangburn, Marc Veasey. (Hebert,

		J.) (Entered: 10/24/2011)
10/25/2011	45	Miscellaneous Objection to 32 Advisory to the Court, DEFENDANTS OBJECTIONS TO PLAINTIFFS PROPOSED INTERIM PLANS by Hope Andrade, Rick Perry, The State of Texas. (Mattax, David) (Entered: 10/25/2011)
10/26/2011	46	Memorandum in Opposition to Motion, filed by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Domingo Garcia, Sarah Joyner, League of United Latin American Citizens, Pat Pangburn, Marc Veasey, re 41 MOTION to Stay Case filed by Defendant Hope Andrade, Defendant Rick Perry, Consol Defendant The State of Texas (Attachments: #1 Exhibit Ex. 1, #2 Exhibit Ex. 2)(Hebert, J.) (Entered: 10/26/2011)
10/27/2011	47	ORDER DENYING 41 Motion to Stay Proceedings and the parties shall continue to proceed under the scheduling orders currently in effect. Signed by Judge Orlando L. Garcia. (kh,) (Entered: 10/27/2011)
10/28/2011	48	ADVISORY TO THE COURT by Hope Andrade, Vicky Bargas, Roy

		Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Clare Dyer, Domingo Garcia, David Hanna, Sarah Joyner, League of United Latin American Citizens, Steve Munisteri, Pat Pangburn, Rick Perry, Boyd Richie, The State of Texas, Marc Veasey Joint Advisory Regarding Remedy Hearing. (Hebert, J.) (Entered: 10/28/2011)
10/30/2011	49	Response in Opposition to Motion, filed by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Domingo Garcia, Sarah Joyner, League of United Latin American Citizens, Pat Pangburn, Marc Veasey, re 40 MOTION to Dismiss and for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant Rick Perry, Consol Defendant The State of Texas Joint Response of Davis Plaintiffs and LULAC (Attachments: #1 Proposed Order, #2 Exhibit Exhibit 1 Sen. Zaffirini Declaration, #3 Exhibit Exhibit 2 Sen. Ellis Declaration, #4 Exhibit Exhibit 3 Rep. Veasey Declaration)(Hebert, J.) (Entered: 10/30/2011)
* * *		
11/01/2011	51	ORDER – proposed order(s)

		regarding election deadlines must be submitted to the Court by 10:00 a.m. on Friday, November 4, 2011. Signed by Judge Orlando L. Garcia. (rf) (Entered: 11/01/2011)
		* * *
11/04/2011	54	ORDERED that for the 2012 elections to the Texas House of Representatives and Texas Senate a person must be a resident of the district the person seeks to represent from December 15, 2011 until the date of the General Election, and it is, It is further ORDERED that an incorrect precinct designation on an application for a place on the ballot shall not render the application invalid if the designation is corrected on or before December 19, 2011. An application for a place on the ballot for the office of precinct chair shall not be invalid if filed more than 90 days before the end of the filing period. ORDERED that for the 2012 elections for federal, state, county and local officers shall proceed as required under state and federal law except as provided for above. The State of Texas through the Secretary of State shall deliver an

		exact duplicate of this order to all election officials and county chairs, to the extent possible, within three days. The order shall also be posted by the Secretary of State on its website and the official election calendar as posted on the Secretary of State's website shall be updated to reflect the terms of this order. The political parties shall deliver this order and notice thereof to county party chairs without delay. Signed by Judge Orlando L. Garcia. (rg) (Entered: 11/04/2011)
11/04/2011	55	REPLY to Response to Motion, filed by Hope Andrade, Rick Perry, The State of Texas, re 40 MOTION to Dismiss and for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant Rick Perry, Consol Defendant The State of Texas (Schenck, David) (Entered: 11/04/2011)
11/05/2011	56	MOTION for Summary Judgment by Hope Andrade, Rick Perry, The State of Texas. (Attachments: #1 Exhibit 1, #2 Exhibit 2, #3 Exhibit 3, #4 Exhibit 4, #5 Exhibit 5, #6 Exhibit 6, #7 Exhibit 7, #8 Exhibit 8, #9 Exhibit 9 part 1, #10 Exhibit 9 part 2, #11 Exhibit 10, #12

		Exhibit 11, #13 Exhibit 12, #14 Exhibit 13, #15 Exhibit 14, #16 Exhibit) (Jordan, Ana) (Entered: 11/05/2011)
	* * *	
11/04/2011	65	Minute Entry for proceedings held before Judge Orlando L. Garcia: Miscellaneous Hearing held on 11/4/2011 (Minute entry documents are not available electronically.). (Court Reporter Karl Myers.) (rf) (Entered: 11/07/2011)
	* * *	
11/08/2011	68	The Parties are ORDERED to file an advisory no later than 8:00 a.m. on Thursday, November 10, 2011 advising whether the Court should proceed with trial on the merits of the Plaintiffs' challenge to the State's enacted map at this time. The parties should state their reasons for either proceeding with the trial on Monday or waiting until a later time. Signed by Judge Orlando L. Garcia. (rg) (Entered: 11/08/2011)
	* * *	
11/09/2011	70	ADVISORY TO THE COURT by Texas Democratic Party. (Dunn, Chad) (Entered: 11/09/2011)
11/09/2011	71	ADVISORY TO THE COURT by Hope Andrade, Rick Perry, The

		State of Texas on Trial Date. (Schenck, David) (Entered: 11/09/2011)
11/09/2011	72	ADVISORY TO THE COURT by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Domingo Garcia, Sarah Joyner, League of United Latin American Citizens, Pat Pangburn, Marc Veasey Regarding November 14, 2011 Trial Date. (Hebert, J.) (Entered: 11/09/2011)
11/09/2011	73	Memorandum in Opposition to Motion, filed by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Domingo Garcia, Sarah Joyner, League of United Latin American Citizens, Pat Pangburn, Marc Veasey, re 56 MOTION for Summary Judgment filed by Defendant Hope Andrade, Defendant Rick Perry, Consol Defendant The State of Texas (Attachments: #1 Appendix Statement of Material Facts in Dispute, #2 Exhibit 1, #3 Exhibit 2, #4 Exhibit 3, #5 Exhibit 4, #6 Exhibit 5, #7 Exhibit 6, #8 Exhibit 7, #9 Exhibit 8, #10 Exhibit 9, #11 Exhibit 10, #12 Exhibit 11, #13 Exhibit 12, #14 Exhibit 13, #15 Exhibit 14, #16

		Exhibit 15, #17 Exhibit 16, #18 Exhibit 17, #19 Exhibit 18, #20 Memo in Support 19, #21 Exhibit 20)(Hebert, J.) (Entered: 11/09/2011)
* * *		
11/10/2011	81	ORDER Cancelling Deadline – After considering the parties' advisories and the status of the proceedings in this Court and in the District Court in D.C., the Court agrees with the parties. A trial on the merits of the challenges to the enacted Senate plan should be postponed until such time as it becomes necessary to address the merits of those challenges. In addition, the Court has determined that a status conference will be more productive if it is postponed for a brief period of time, during which the Court will continue its work on interim plans. The status conference previously scheduled for Monday, November 14, 2011 is cancelled, but the Court will hold a status conference in the very near future. This decision is based on a majority of the panel. Circuit Judge Jerry Smith dissents from the decision to postpone the trial and status conference. Signed by Judge

		Orlando L. Garcia. (rg) Modified text on 11/10/2011 (rg). (Entered: 11/10/2011)
		* * *
11/10/2011	83	ADVISORY TO THE COURT by Hope Andrade, Rick Perry, The State of Texas REGARDING DEVIATION FROM EQUALIZED DISTRICT POPULATION IN INTERIM REDISTRICTING PLANS. (Attachments: #1 Exhibit)(Schenck, David) (Entered: 11/10/2011)
11/11/2011	84	ADVISORY TO THE COURT by Domingo Garcia, League of United Latin American Citizens Joint LULAC–Davis Plaintiffs Senate Plan. (Attachments: #1 Exhibit Demographic, Population and Voter Data s160)(Vera, Luis) (Entered: 11/11/2011)
11/14/2011	85	ADVISORY TO THE COURT by Vicky Bargas, Roy Brooks, Wendy Davis, Frances DeLeon, Domingo Garcia, Sarah Joyner, League of United Latin American Citizens, Pat Pangburn, Marc Veasey Regarding Population Equality and Interim Plans. (Hebert, J.) (Entered: 11/14/2011)
11/17/2011	86	ORDER the parties are ordered to access the proposed interim plan

		and file any comments and/or objections by 11/18/11. Signed by Judge Orlando L. Garcia. (rf) (Entered: 11/17/2011)
11/18/2011	87	ADVISORY TO THE COURT by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Domingo Garcia, Sarah Joyner, League of United Latin American Citizens, Pat Pangburn, Marc Veasey Regarding Court's Proposed Interim Plan S163. (Hebert, J.) (Entered: 11/18/2011)
11/18/2011	88	ADVISORY TO THE COURT by Hope Andrade, Rick Perry, The State of Texas Objections to Court's Proposed Interim Senate Plans. (Attachments: #1 Exhibit, #2 Exhibit) (Schenck, David) (Entered: 11/18/2011)
11/23/2011	89	ORDER regarding the interim plan for the districts used to elect members in 2012 to the Texas Senate. Signed by Judge Orlando L. Garcia. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C) (rf) (Entered: 11/23/2011)
11/23/2011	90	Opposed MOTION to Stay Implementation of Interim Senate Redistricting Plan by Hope Andrade, Rick Perry, The

		State of Texas. (Attachments: #1 Proposed Order)(Schenck, David) (Entered: 11/23/2011)
11/25/2011	91	ORDER Denying 90 Opposed MOTION to Stay Implementation of Interim Senate Redistricting Plan filed by Hope Andrade, Rick Perry, The State of Texas. Signed by Judge Orlando L. Garcia, Circuit Judge Jerry E. Smith, Judge Xavier Rodriguez. (mo,) (Entered: 11/25/2011)
11/26/2011	92	AMENDED ORDER re 91 Order denying Motion to Stay Implementation of the Court-Drawn Interim Senate Redistricting Plan. Signed by Judge Orlando L. Garcia, Circuit Judge Jerry E. Smith, and Judge Xavier Rodriguez. (mo,) (Entered: 11/26/2011)
11/27/2011	93	Appeal of Order entered by District Judge 89 by Hope Andrade, Rick Perry, The State of Texas. No filing fee submitted (Schenck, David) (Entered: 11/27/2011)

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 12/16/11
Document 563

ORDER

Under consideration are various motions and issues pertaining to redistricting of the United States House of Representatives, the Texas House of Representatives and the Texas State Senate. The two major political parties have carefully worked out the agreement giving rise to this order and no party to this consolidated action has objected. The order has been reviewed by the Secretary of State's office as well as numerous county election officers including those in Dallas, Harris, Travis and Bexar counties. The Court appreciates the good faith and diligence of all of those who have fashioned this recommendation.

The following schedule is contingent upon this Court entering redistricting plans for Texas House, Senate and Congress on or before February 1, 2012.

It should be carefully noted, however, that nothing in this Order should be construed as an assurance or prediction that new redistricting plans will have been ordered by February 1, 2012. This Court has no control over the timing of decisions by other courts that are involved in this process.

Residency

Therefore, it is ORDERED that for the 2012 elections to the Texas House of Representatives and Texas Senate a person must be a resident of the district the person seeks to represent from February 1, 2012 until the date of the General Election, and,

It is further ORDERED that an incorrect precinct, district or place designation on an application for a place on the ballot shall not render the application invalid if the designation is corrected on or before February 1, 2012 at 6 p.m. If a previously filed application indicated a district, precinct or place designation specifying a particular map to which that designation applied, or if the application did not specify a district, precinct, or place designation, and one is required for the office sought, the application shall be rejected if not amended to correct such designation prior to 6 p.m. February 1, 2012. Any petition submitted in lieu of filing fee must contain valid signatures of registered voters of the territory from which the office sought is elected in the number required by the Texas Election Code, and must be submitted to the appropriate filing authority no later than 6:00 p.m., February 1, 2012.

An application for a place on the ballot for the office of precinct chair shall not be invalid if filed more than 90 days before the end of the filing period.

Schedule for Reopened Filing Period and General Primary

The Court hereby adopts and orders this procedure with respect to the 2012 Primary Election for federal, state, county and local offices. All those dates, deadlines or requirements not specifically adjusted by this order remain as required under state or federal law:

a. Subsections (c)-(m) of this Court's Order of November 7, 2011 (Docs. 57 and 489) are vacated. Ballot drawings and delivery of candidate lists as provided for in that order are not required until after the close of the reopened filing period as set forth below.
b. The first day to file an application for a place on the Primary Ballot during the reopened filing period as described in Texas Election Code § 172.023(b) shall be at a future date to be determined by this Court.
c. An application for a place on the general primary election ballot during the reopened filing period must be filed not later than 6 p.m. on February 1, 2012 as described in Texas Election Code § 172.023(a). All amendments to previously filed applications with respect to office, precinct, place or any other material detail must be completed by this time. Candidates, and not filing authority

election staff, may amend their applications by replacing the whole page of such application that requires changes. Each submitted page must contain the signature of the candidate and the date it was signed. Political parties that make their nominations by convention and do not hold a primary election may accept applications until 6:00 p.m., February 1, 2012. Applications filed with the incorrect authority are deemed to have been timely received by the correct authority if the authority who received the application was the correct authority at the time the application was originally filed. Applications filed with the incorrect authority shall be forwarded to the correct authority without delay.

d. The last day a vacancy for an unexpired term in an office of the state or county government may occur and appear on the primary ballot, as described in Texas Election Code § 202.004(a), is January 27, 2012.

e. The deadline for the county chair (or secretary of the county executive committee) to post a notice on the bulletin board used for posting notices of the commissioners court's meetings, containing the address at which the county chair and secretary of the county executive committee will be available to receive applications on the last day for filing an

application, as described in Texas Election Code § 172.022, is January 31, 2012.

f. If a candidate withdraws, dies or is declared ineligible by February 2, 2012, the name is omitted from the primary ballot as described Texas Election Code §§172.057 & 172.058.

g. The deadline for a state chair to deliver a certified list of statewide and multi-county district candidates to each county chair, as described in Texas Election Code § 172.028(b), is February 2, 2012.

h. The deadline for a write-in candidate for the office of county or precinct chair to file a declaration of write-in, as described in Texas Election Code § 171.0231(d), is February 1, 2012.

i. The deadline for the state or county chair, as applicable, to receive applications for a place on the general primary election ballot for an unexpired term for a vacancy in an office of the state or county government that occurs on or before January 27, 2012, as described in Texas Election Code § 202.004(b) is February 1, 2012.

j. The deadline for a county executive committee to conduct a drawing for candidate order on the ballot at the county seat (unless the committee provides by resolution that the primary committee is to conduct drawing), as described in Texas Election Code § 172.082(c), is February 3, 2012.

k. The deadline by which the state chair shall deliver the chair's list to the secretary of state, and each county chair shall deliver a copy of the chair's list to the county clerk, the state chair, and the Secretary of State as described in Texas Election Code § 172.029(c), is February 2, 2012.

l. If changes in county election precinct boundaries are necessary to give effect to a redistricting plan under Article III, Section 28, of the Texas Constitution, each commissioners court shall order the changes on or before January 31, 2012, as described in Texas Election Code § 42.03 2. The requirements of Texas Election Code § 42.036 are suspended for an order of a commissioner's court adopted to comply with this section of this Court's Order.

m. The first day of the period for a voter to submit an application for an early ballot by mail for the general primary, or for both the general primary and the runoff primary election, as described in Texas Election Code § 84.00 1(d), (e) & 84.007, shall be February 11,2011.

n. On or before February 13, 2012, the registrar shall issue a voter registration certificate to each voter in the county whose registration is effective on the preceding November 14 and whose name does not appear on the suspense list, as described in Texas Election Code § 14.001.

o. **The 2012 General Primary Election shall be held on April 3, 2012.** All

deadlines and dates specified as changed in this Order, or in previously issued orders in this action shall be observed as provided for in the Texas Election Code.

p. The deadline for runoff primary candidates to withdraw from the runoff ballot, as described in Section 172.059, Election Code is 5 p.m. April 10, 2012.

q. The local canvass of the general primary for county and precinct offices by the county executive committee, as described in Texas Election Code § 172.116(b) and 172.084(b) shall occur on or before April 11, 2012.

r. The deadline for county chairs to submit canvassed returns for statewide and district offices to the state party chair as described in Texas Election Code § 67.007(d) and 172.119(b) is Noon, April 12, 2012.

s. The deadline for the state executive committees to conduct the canvass of statewide and district offices with potential runoffs, and certify these candidates to county chairs as described in Texas Election Code § 172.120 and 172.121, is 5 p.m., April 14, 2012.

t. The ballot drawing conducted by county executive committee for all offices on the primary runoff ballot, as described in Texas Election Code § 172.084(b) and (c) shall occur no later than 9 a.m., April 16, 2012.

u. The first day of the period for a voter to submit an application for an early ballot by mail for the runoff primary, as described in Texas Election Code § 84.001(d), (e) & 84.007, shall be April 6, 2011

v. County and Senatorial District Conventions, as described in Texas Election Code § 174.063, shall be held on either April 14 or April 21, 2012 as determined by the State Chair of each political party.

w. The 2012 General Primary Runoff Election shall be held on June 5, 2012.

Therefore, it is ORDERED that the 2012 elections for federal, state, county and local officers shall proceed as required under state and federal law except as provided above. The State of Texas through the Secretary of State shall deliver an exact duplicate of this order to all election officials and county chairs, to the extent possible, within three days. The order shall also be posted by the Secretary of State on its website and the official election calendar as posted on the Secretary of State's web site shall be updated to reflect the terms of this order.

Nothing in this order shall be construed by the Court or the parties as a waiver of the positions of each party with respect to the schedule or conduct of the upcoming election. The parties' positions as stated at the December 13, 2011 hearing are expressly reserved. Additionally, the Republican and Democratic parties have agreed that it is necessary to have a primary early enough in April to allow

them to conduct their statutorily required conventions as previously planned.

SIGNED this **16th** day of **December**, 2011.

ORLANDO GARCIA
UNITED STATES DISTRICT JUDGE

And on behalf of:

JERRY E. SMITH
UNITED STATES CIRCUIT JUDGE
U.S. COURT OF APPEALS, FIFTH CIRCUIT

and

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 12/02/11
Document 549

SUPPLEMENTAL OPINION

The State of Texas has appealed the Court orders implementing the court drawn plans for the districts to be used to elect members in the Texas House of Representatives (Dkt. No. 528) and the United States House of Representatives (Dkt. No. 544). The Court previously indicated, in its order implementing the plan for the Texas House, that "[a] more comprehensive opinion addressing additional legal issues will follow."[1] Dkt. No. 528. This

[1] The dissent criticizes the issuance of this supplemental opinion as having "the smell of a brief on appeal." The Court's prior order expressly stated that a supplemental opinion would follow because the Court was unable to issue a full opinion under the severe time constraints. The sole purpose of this opinion is to provide a detailed explanation for how the Court drafted the interim House plan for the benefit of the parties, the Supreme Court, and future redistricting panels.

supplemental opinion serves to further clarify the legal issues discussed in the Court's prior two orders, which were released under severe time restraints. Because the Court has not ruled on the merits of any claims herein and the State's appeal is interlocutory in nature, this Court has not lost jurisdiction over this matter and this Supplemental Opinion should be filed in this consolidated action and considered for all purposes.[2] The Court requests that the parties ensure that this Supplemental Opinion be filed with the U.S. Supreme Court.

Despite rhetoric of a "runaway plan," the Court's plan gave as much consideration to the State's enacted map as possible without rubberstamping the districts that were the subject of legal challenges; this consideration was given to the enacted plans even though, as discussed below, a finding that a three judge court is required to apply *Upham* deference prior to a preclearance determination defies the plain language of the Voting Rights Act, the legislative intent behind Section 5, existing Supreme Court precedent, and a myriad of practical realities. Those practical realities include the Court's obligation to ensure that the interim map does not contain split VTDs so that it is capable of being implemented under severe time constraints. This prevents the Court from adopting even the unchallenged districts from the enacted plan

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[2] The State brought its appeal under 28 U.S.C. § 1253, which applies to interlocutory orders determined by a three judge district court. Section 1253 is analogous to section 1292(a)(1), which gives the courts of appeals jurisdiction to hear appeals from interlocutory orders in other cases. *See Goldstein v. Cox*, 396 U.S. 471, 475 (1970).

wholesale. Moreover, the Court is prevented from making Section 5 determinations not only because it lacks jurisdiction to do so, but also because as a practical reality, the three judge panel has not heard evidence regarding Section 5; nor could it hear that evidence and make those determinations without wasting an enormous amount of judicial resources and potentially reaching a result that would later be inconsistent with a D.C. Court ruling.

I.

Legal Standard

The State and dissent argue that there is a tension between the two leading Supreme Court cases addressing court drawn maps – *Upham v. Seamon*, 456 U.S. 37 (1982) and *Lopez v. Monterey County*, 519 U.S. 9 (1996). Specifically, it is argued that *Upham* directs remedial courts to always defer to state policy decisions, while *Lopez* directs remedial courts to not implement maps reflecting state policy choices that have not been precleared. They therefore advocate that this Court defer to the legislative choices of the State of Texas represented by the enacted House plan and Congressional maps by applying a preliminary injunction standard to evaluate whether the state plan violates federal law.

As explained in our prior orders, the Court disagrees with this analysis. The Court does not read *Lopez* and *Upham* as being in tension with one another; to the contrary, the Court believes that they outline the different legal standards applicable to cases where there are official objections by the Attorney General, as opposed to cases where there is no enacted plan or where preclearance is pending. As

such, we believe that deferring to the enacted plans is improper because doing so would interfere with the preclearance process in the D.C. Court.

This result is consistent with the plain language of Section 5 and the legislative history of the Voting Rights Act. Section 5 provides that "*unless and until* the [the United States District Court for the District of Columbia enters a judgment] no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure." 42 U.S.C. § 1973c (emphasis added). Thus, by the statute's plain terms, a voting change cannot be implemented until the D.C. Court has issued a judgment.

The legislative history is similarly supportive of the Court's position. In 1975, when Congress adopted amendments to the Act, the Senate Committee issued its Report on S.1279, which addressed the appropriate role of remedial courts. First, the Committee cited favorably to the Supreme Court's decision in *Connor v. Waller*, 421 U.S. 656 (1975). There, the Court ruled that even when a governmental body adopts a plan that is patterned after a court-drawn plan, it still must submit the plan for Section 5 preclearance. *Id.* at 656-57. The Court further concluded that federal courts should not make determinations regarding constitutional questions until all Section 5 challenges have been resolved. The Committee concluded that this result "is consistent with the Committee's objective to utilize a form of primary jurisdiction for Section 5 review under which courts dealing with voting discrimination issues should defer in the first instance to the Attorney General or the District of

Columbia District Court." S. Rep. No. 94-295, p. 18 (1975) (hereinafter "Senate Report").

The Committee then went on to note that when a court adopts a plan proposed by the State during litigation, that plan also must be submitted for Section 5 preclearance. The Committee noted that "[t]he one exception where section 5 review would not ordinarily be available is where the court because of exigent circumstances actually fashions the plan itself instead of relying on a plan presented by a litigant." *Id.* at 19. In such cases, "the court should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases." *Id.*

The Supreme Court has noted that "[t]he view expressed by the Committee is consistent with the basic purposes of the statute and with the well-settled rule that § 5 is to be given a broad construction. The preclearance procedure is designed to forestall the danger that local decisions to modify voting practices will impair minority access to the electoral process. The federal interest in preventing local jurisdictions from making changes that adversely affect the rights of minority voters is the same whether a change is required to remedy a constitutional violation or is merely the product of a community's perception of the desirability of responding to new social patterns." *McDaniel v. Sanchez*, 452 U.S. 130, 149-50 (1981) (citations and footnotes omitted).

Thus, the Court must draw independent redistricting plans without ruling on the merits of the pending legal challenges to the State's

unprecleared plans. Connor, 421 U.S. at 656-67 (because the Act would not be effective until precleared under § 5, the district court erred in deciding the constitutional challenges to the Act based on claims of racial discrimination); *Mississippi v. Smith*, 541 F. Supp. 1329, 1332 (D.D.C. 1982) (the remedial court "lacks jurisdiction to consider the constitutionality of the plan before it has been precleared pursuant to section 5"). The United States and many intervenors have denied that the State is entitled to preclearance and they have challenged the Texas House and Congressional plans under Section 5 of the Voting Rights Act, claiming: (1) that the plans (and not simply specific districts therein) were drawn with discriminatory intent; (2) the plans have the purpose and effect of denying or abridging minorities' right to vote; and (3) the plans are retrogressive because minorities have the opportunity to elect their candidate of choice in proportionally fewer districts when compared with the benchmark plan. *See* Dkt. Nos. 53, 79, filed in *State of Texas v. United States*, Civil Action No. 11-CV-1303, in the United States District Court for the District of Columbia.

The United States has stated that the evidentiary basis for its claim of discriminatory intent "is not limited to any particular district or districts but rather extends to the kinds of direct and circumstantial evidence that the Supreme Court identified as probative of discriminatory purpose in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977)." Dkt. No. 53, p. 7, filed in State of Texas v. United States, Civil Action No. 11-CV-1303, in the District Court for the

District of Columbia. The intervenors also assert that while certain districts exhibit characteristics that are indicative of discriminatory purpose, they are challenging the plans in their entirety. *See id.*, Dkt. No. 53, pp. 16-17 (MALC); p. 18 (Gonzales); p. 23 (Texas Latino Redistricting Task Force). The United States has asserted that when the State is requesting preclearance of a statewide plan, analysis of retrogression should be conducted on a statewide basis. *Georgia v. Ashcroft*, 539 U.S. 461, 479 (2003); *City of Lockhart v. United States*, 60 U.S. 125 (1983). See Dkt. No. 79, United States' Memorandum in Support of its Opposition to the State's Motion for Summary Judgment, p. 10, filed in State of Texas v. United States, Civil Action No. 11- CV-1303, in the District Court for the District of Columbia.

The Section 5 challenges are not the only pending legal challenges to the State's enacted plans. Plaintiffs and intervenors in this case have challenged the Texas House and Congressional plans under the Fourteenth Amendment as "racial gerrymanders" that intentionally discriminate against minorities and violate the one person, one vote principle. They also assert that the unprecleared plans dilute the voting strength of minority voters in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.[3] The Court has heard

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[3] *See* Quesada plaintiffs' first amended complaint, Dkt. No. 105; MALC's second amended complaint, Dkt. No. 50; Latino Redistricting Task Force's second amended complaint, Dkt. No. 68; Perez plaintiffs' third amended complaint, Dkt. No. 53; Rodriguez plaintiffs' first amended complaint, Dkt. No. 23, filed in Cause No. 11-CA-635, prior to consolidation; LULAC's first

evidence on the parties' legal challenges, but the Court has not reached any determination on the merits of those challenges and, as noted above, is precluded from doing so unless or until the State's enacted plan has been precleared.

II.

A. Preliminary Injunction Standard is Inappropriate

As noted above, the State and dissent advocate for the use of a preliminary injunction standard in this case. There are obvious reasons why the Court cannot do so. First, there is no motion for preliminary injunction pending before the Court, nor has one ever been filed. Unless a motion for preliminary injunction is filed, there is no legal basis for the application of preliminary injunction standards. If the State in this case had been trying to implement an unenforceable plan, such as the benchmark plan or the unprecleared plan, the plaintiffs could have moved for injunctive relief and they clearly would have been entitled to such relief.[4] However, the State has agreed since the inception of this case that its enacted plans are unenforceable unless or until precleared and it has not tried to implement its plans. There has been no need for affirmative injunctive relief in this case. Even if there had been a need for injunctive relief, and the

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amended and supplemental complaint, Dkt. No. 78; NAACP' s amended complaint, Dkt. No. 69.

[4] "If a voting change subject to § 5 has not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting implementation of the change." *Lopez*, 519 U.S. at 20.

Court had been required to enjoin the State from implementing its unprecleared plans, there would be no legal basis for applying a traditional preliminary injunction standard in drawing an independent court-ordered plan.

Second, and more importantly, is the intrusion on the preclearance process. As discussed above, there are statewide Section 5 challenges to both the Texas House and Congressional plans pending preclearance. The Court does not have jurisdiction to determine those issues, preliminarily or otherwise. *U.S. v. Bd. of Sup'rs of Warren County*, 429 U.S. 642, 645 (1977) ("What is foreclosed to such district court is what Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General – the determination whether a covered change does or does not have the purpose or effect of denying or abridging the right to vote on account of race or color."). Because preclearance must be determined before any other issues are ripe for this Court's consideration, the Supreme Court has forbidden remedial district courts from making any determination on the merits of the State's enacted plans until *after* preclearance. *Conner v. Waller*, 421 U.S. at 656-57; *Smith v. Clark*, 189 F. Supp. 2d at 534. This clearly includes any preliminary determination as to whether plaintiffs are "likely to succeed" on the merits of their claims, regardless of whether those claims arise under the Voting Rights Act or the U.S. Constitution.

Moreover, if a three judge panel was required to apply a preliminary injunction standard in the interim map stage, it would be forced to hear

evidence regarding Section 5 and to make determinations regarding the applicable legal standards for Section 5 claims. *See Texas v. United States*, 785 F. Supp. 201, 205 (D.D.C. 1992) (Section 5 determinations "require [the court] to conduct some kind of hearing . . . [and] is not an issue that can be resolved as a matter of law."). This could lead to inconsistent factual findings and determinations regarding Section 5 legal standards, undermining the purpose of consolidating Section 5 cases in the D.C. Court. Additionally, if a preliminary injunction standard were used, it would allow legislatures to intentionally enact voting changes at the last minute in order to obtain a preliminary ruling by a local federal court that would potentially allow the change to take effect, thereby completely circumventing the Section 5 preclearance process.[5]

Finally, a preliminary injunction standard is not a manageable standard for a three judge panel attempting to draw an interim map. Determining violations of the Voting Rights Act is a complex and fact intensive exercise that requires courts to assess discriminatory motives on the one hand and complex data regarding discriminatory effect on the other. *See Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471,

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[5] Indeed, the 1975 Senate Committee on the Voting Rights Act extension noted that the Voting Rights Act was enacted because Congress was presented with "evidence of the great lengths to which certain jurisdictions would go in order to circumvent the guarantees of the 15th Amendment." Senate Report at 15. Thus, Congress created the Section 5 preclearance requirement to "insure that any future practices of these jurisdictions [would] be free of both discriminatory purpose and effect." *Id.*

488 (1997) ("[A]ssessing a jurisdiction's motivation in enacting voting changes is a complex task requiring a sensitive inquiry into such circumstantial and direct evidence as may be available."); *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966) ("The heart of the Act is a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant").

In cases where a court-drawn interim map is required because a state has submitted a redistricting plan for preclearance, but no preclearance decision has been issued, the maps will always be drawn under time intensive conditions. This is true even in cases such as this, where a lawsuit was filed seven months in advance of the filing period for candidates. The reason is the Supreme Court's decision in *Growe v. Emison*, 507 U.S. 25 (1993). In *Growe*, the Supreme Court held that "absent evidence that these state branches will fail timely to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it." *Id.* at 34. A three judge panel, therefore, has no choice but to wait as long as possible before implementing an interim map, in the hopes that a preclearance decision will be rendered.[6]

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[6] In the instant case, the Court pushed back the election filing period from the middle of November to November 28, 2011. The Court then adjusted the close of the filing period from December 12, 2011 to December 15, 2011. However, the filing period could not be delayed any further without serious disruptions to the 2012 election cycle.

While waiting, it is entirely reasonable for the three judge panel to hold hearings and take evidence. Indeed, the Court in this case held a two week trial in September and a second three day hearing in October/November. However, it would be a waste of judicial resources for the three judge panel to begin the complicated merits analysis required of Voting Rights Act claims before it becomes likely that an interim map will actually be necessary. This is especially true for the two district judges on the panel who must manage full dockets, including criminal dockets with speedy trial requirements, with only two law clerks. In this case, there are close to fifty separate challenges to three different electoral maps. The analysis required to make legal findings on those challenges, even preliminarily, would be intensive and unfeasible in the time provided without otherwise negatively affecting the remainder of the Court's docket. It would not be an efficient use of judicial resources to consider the myriad of complex legal and factual issues involved in the merits analysis, when all of those issues would become moot if preclearance were to be granted or denied as to the whole map.

III.

Summary of the process used by the Court in drawing the House plan[7]

As discussed in the Court's prior order entered on November 23, 2011, the Court drew its plan for the Texas House after considering all of the parties' proposed plans. For many districts, the Court considered the configuration in the State's enacted plan, and for others the Court attempted to stay true to benchmark configuration, at least as much as possible. The Court was mindful of the various legal challenges to the State's enacted plan and attempted to avoid the same legal challenges to the court drawn map. The Court took a cautious approach to drawing the map, ensuring that the existing minority opportunity districts were preserved to avoid Section 2 and/or Section 5 violations.

The tremendous population growth caused many changes in district lines. In drawing the lines, the Court tried to avoid splitting county lines unless those concerns were trumped by constitutional concerns. *See Reynolds v. Sims*, 377 U.S. 533, 584 84 S.Ct. 1362 (1964)("When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course controls"). The Court ensured that all districts were contiguous and reasonably compact. It also attempted to avoid the division of municipal

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[7] The Court's order dated November 26, 2011 adequately explains the process used in drawing the Congressional plan, so the Court limits this part of its opinion to the Texas House plan.

boundaries and broader communities of interest. The Court tried to avoid pairing incumbents – out of 150 House districts, incumbents were paired in seven (7) districts, assuming those representatives wish to run for re-election. And finally, the Court attempted to adhere to the historical or benchmark configuration of the districts as much as possible. These neutral criteria served the Court well in drawing up a plan that may not be perfect but certainly conforms to all legal requirements.

The Court was also concerned with not splitting "VTDs." A VTD is a voter tabulation district and is the functional equivalent of a voting precinct. After hearing evidence at trial and in the interim plan hearing, it became clear that cutting VTDs would create enormous administrative and financial difficulties for local governments preparing for an election at the eleventh hour. *See Vera v. Bush*, 933 F. Supp. 1341, 1347 (S.D. Tex. 1996) ("Moreover, the Court's remedial plan addresses the single most troubling and realistic hurdle, the potential splitting of voter tabulation districts ('VTD's'), by avoiding that consequence in all but a small handful of voting precincts."). Specifically, the Court was informed that voters must be assigned to a precinct in order to get new registration cards and that precincts must be drawn before voters can be assigned. If counties are able to use the existing VTDs, nothing else needs to be done. Also, by not changing the VTDs, the county may not have to submit any voting changes to the Department of Justice for preclearance. The Court therefore endeavored to avoid as many VTD cuts as possible, and ultimately was able to craft a House plan with only 8 VTD cuts. In contrast, the

enacted plan appears to have 412 VTD cuts, and the dissent plan appears to have 179 VTD cuts.

The State has consistently criticized the Court's plan for making "unnecessary" changes to uncontested districts without finding any legal violations. As explained above, the Court does not believe that it was required to provide any deference to the enacted maps. However, even if the Court was required to give *Upham* deference to the interim maps, the Court would still have needed to make the changes to the uncontested districts to correct cuts in the VTDs that would have impeded implementation of the plan under intense time constraints.

As discussed in the Court's November 23, 2011 order, the Court began by considering the uncontested districts from the enacted plan that embraced neutral districting principles. Although the Court was not required to give any deference to the Legislature's enacted plan, the Court attempted to embrace as many of the uncontested districts as possible. After inserting those districts into the map, the Court adjusted them to avoid VTD cuts and to achieve *de minimis* population deviations.

After incorporating as many of the uncontested districts as possible into the interim map, the Court turned to the districts that are challenged as unconstitutional and attempted to return them to their original configuration in the benchmark, while giving consideration to any apparently neutral districting principles in the enacted plan. Harris County was the subject of numerous objections by Plaintiffs and the Department of Justice in both this

Court and the D.C. Court.[8] In drawing the districts for Harris County, the Court first had to determine how many districts to allot it. Based purely on population, Harris County is entitled to 24.4 districts; but, in the benchmark Harris County had 25 districts, which was purportedly the result of a legislative compromise to allow for greater minority representation. The enacted plan reduced the number of districts to 24, but the Plaintiffs encouraged the Court to maintain 25 districts in Harris County. Ultimately, the Court decided to reduce it to 24 districts because basing the number of districts on population was the most neutral principle available. In addition, the Court was informed that the incumbent in District 136 would be retiring, which would allow the Court to reduce the number of districts without unseating any representatives.

Next, the Court had to determine which districts would remain in Harris County and how they would be configured. In deciding which district to eliminate, the Legislature had removed District 149 from Harris County, which was a minority district represented by one of the only Asian members of the House. The removal of District 149 led to a Section 5 objection by the Department of Justice in the D.C. Court and a Section 2 objection by the Plaintiffs in this case. In accordance with the goal of maintaining the status quo and avoiding retrogression, the Court

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[8] Specifically, there were Section 5 challenges to Districts 144, 146, and 149; Section 2 challenges to Districts 137, 144, and 149; and Fourteenth Amendment challenges to Districts 137, 145, and 147.

and the dissent decided to defer to the benchmark plan and placed District 149 back in Harris County. The Court then removed District 136 from Harris County, which as noted above had a retiring incumbent.

After resolving those issues, a number of the remaining districts were still the subject of objections. The Court attempted to draw Harris County as close to the benchmark as possible, while giving consideration wherever possible to the enacted map. However, because of the removal of District 136 and the Court's effort to not break VTDs, it was not possible to completely restore Harris County to its original configuration. Nevertheless, the Court was able to keep most districts in roughly their same position as the benchmark.[9]

The Court has been criticized for allegedly "creating" an additional Black opportunity district in Harris County (District 144). However, the Court did not strive to create any Section 2 districts. District 144 arose naturally from the changing demographics in Harris County. Over the past 10 years, minority

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[9] Indeed, drawing the Harris County portion of the House map was probably the most challenging task this Court undertook in crafting the interim maps. But with the invaluable assistance of the Texas Legislative Council, nine districts in Harris County retained more than 70% of its population from the benchmark, and an additional eight districts retained more than 50% of their original population. The Court's map also bears similar resemblance to the enacted plans – nine of the Harris County districts contain more than 70% of their population in the enacted plans, and eleven districts contain more than 50% of the same population as the enacted plan.

growth in Harris County has increased by over 700,000, while Anglo population decreased by more than 82,000.[10] Thus, over 89% of the population growth in Harris County was due to minority growth. Because of the significant minority growth in Harris County, it is inevitable that a neutral approach could produce an additional minority district, especially since the combined minority population is in excess of 65%.[11] In Dallas County the Plaintiffs objected to all of the districts on one-person one-vote grounds.

Specifically, it is alleged that the State intentionally manipulated Districts 103, 104 and 105 in order to overpopulate minority districts.[12] In addition, because Dallas County did not grow in

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[10] Census data can be viewed at http://factfinder.census.gov. Specifically, the Court's calculations indicate that in Harris County the Black population increased by 146,873; the Latino population increased by 551,789; and the Asian population grew by 78,406. In contrast, the Court calculates that Anglo population decreased by 82,618.

[11] According to census data, Anglos only make up 33% of the population in Harris County. *See* http://factfinder.census.gov.

[12] Specifically, Plaintiffs allege that District 105 in the enacted plan was drawn to try and put a Republican in office and as a result was overpopulated by 8,091 because large amounts of Hispanic populations were taken out by fingers that protrude into it from District 103 (splitting approximately 10 precincts). The removed Hispanic population was then allegedly replaced with exceedingly large amounts of Anglo population from a finger that runs south, overpopulating District 105 by Anglos, and thereby diluting the voting strength of the minorities in District 105. Plaintiffs further allege that another byproduct of this endeavor is that Latino opportunity District 103 became the most overpopulated district in the county.

population at the same rate as the rest of the state, Dallas County lost two House seats. In determining which two districts to remove, the Court first ensured that minority districts were preserved to avoid any Voting Rights Act issues. The Court then looked to the enacted plan and noted that the Legislature removed two Anglo districts – Districts 101 and 106. After considering the Constitutional and Voting Rights Act issues, the Court gave consideration to the State's enacted plan and also removed Districts 101 and 106 from Dallas County. The Court then attempted to restore as much of Dallas County to the benchmark configuration as possible, while giving consideration whenever possible to the enacted maps.[13] Once again this was a difficult task because the loss of two districts inevitably required that changes be made to the remaining districts.

The dissent criticizes the Court for allegedly "creating" a new coalition minority district (District 107). However, as discussed above, the Court has not intentionally created any minority districts. Rather, any additional minority districts resulted from the use of neutral districting principles and demographic changes. The 2010 census demonstrates that the black population in Dallas County increased by more than 97,000 and the Latino population increased by

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[13] Out of the thirteen districts in Dallas County, four of the Court's Dallas districts contain more than 70% of their original population from the benchmark, and an additional four districts contain more than 50% of their original population. Compared to the enacted plan, eight districts contain more than 70% of the enacted population, and one additional district contains more than 50% of the enacted population.

more than 243,000, while the Anglo population declined by almost 200,000.[14] Thus, as in Harris County, it is inevitable that a neutral approach could produce additional minority districts, especially since, once again, the combined minority population is in excess of 65%.[15]

Three districts in Tarrant County are challenged under Section 2, Section 5, and one-person one-vote. With regard to one-person one-vote, the Plaintiffs allege that Districts 90 and 95 have bizarre configurations as a result of packing minorities into already effective minority districts, which was allegedly done to prevent the creation of another minority opportunity district in District 96, and thereby preserve the Republican incumbent in District 96. In addition, all the districts in Tarrant County, but especially Districts 90, 93, and 95, are alleged by the intervenors in the D.C. Court to violate Section 5 because of the alleged intentional fragmentation of minorities resulting in exceptionally and unnecessarily contorted districts.

In drafting the districts for Tarrant County, the Court first determined that because of population growth, the County received an additional district. The Court decided to place the new district, which is numbered District 101 in the Court map and District

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[14] Census data can be viewed at http://factfinder.census.gov. Specifically, the Court's calculations indicate that in Dallas County the Black population increased by 97,584 and the Latino population increased by 243,211. In contrast, the Court calculates that Anglo population decreased by 198,624.

[15] According to census data, Anglos only make up 33.1% of the population in Dallas County. *See* http://factfinder.census.gov.

93 in the enacted map,[16] in the same location as the State – along the southeast border of the County. Next the Court attempted to return the districts to their configuration in the benchmark, while giving appropriate consideration to any neutral policy choices apparent in the enacted plans.[17] In doing so, the Court ensured that there were no VTD cuts.

The dissent criticizes the Court's approach to Tarrant County, arguing that "the plaintiffs had offered no evidence that the slight population deviations were the result of racial gerrymandering." Dkt No. 528, at 24. The dissent completely ignores the fact that there is a Section 5 challenge to the entire county, with special emphasis placed on Districts 90, 93, and 95. By rubberstamping the State's configuration for Tarrant County, the dissent is making a de facto ruling on a Section 5 issue. Finally, by failing to remove the State's VTD cuts, the dissent incorporates 31 VTD cuts, a number that is unmanageable given the current time constraints.

In Nueces County, the Department of Justice objected to the alleged intentional dismantling of Latino dominated District 33. In order to maintain

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[16] The Court gave the new district the new number (101), while the State gave the new district an old number (93). The Court kept District 93 as it was in the benchmark plan – along the eastern Tarrant County line.

[17] Of the 10 original districts in Tarrant County, seven districts in the Court's map contain more than 80% of their population in the benchmark, two contain more than 70%, and one contains more than 50%. Compared to the enacted plan, nine of the Court's districts contain more than 70% of the enacted population.

the status quo and avoid any potential Section 5 issues, both the Court plan and the dissent plan restored the minority opportunity district in Nueces County. In doing so, the Court configured the districts such that they would avoid incumbent pairings. However, at least one pairing was inevitable; so, the Court drew District 33 in a way that paired the same incumbents that were paired in the enacted plan.

In Bell County, District 54 was challenged under Section 2 and Section 5 of the Voting Rights Act. The Plaintiffs argue that under Section 2 a compact coalition district could be created in Bell County with fewer county line cuts than the State's enacted map. Further, the Intervenors in the D.C. Court argue that in the benchmark plan, District 54 changed from a 55.4 percent Anglo majority in 2000 to a 51.5 percent minority majority in 2010, but that the State split the minority population of the City of Killeen with district 55 (which increased over five percentage points from 2000 to 2010) rather than unite Killeen into a single district.

As it did with the other challenged districts, the Court went back to the benchmark and noted that District 54 included all of rural Lampasas and Burnett Counties, but then had a county line cut into Bell County to allow a tail from District 54 to pick up most of the City of Killeen. Since 2010, Lampasas and Burnett Counties have experienced significantly less population growth compared to the

rest of the State.[18] Bell County in contrast experienced 30.4% growth, with Killeen experiencing 47.2% growth, which is more than 56% of the entire population growth in Bell County.[19] Further, according to the Court's calculations, Killeen had 4 times the population growth of Burnett County and Lampasas County combined.

In order to comply with Texas's county-line rule, the Court determined that given the population growth in Bell County, the county-line cut was now unnecessary. Thus, using neutral districting principles, the Court created a district wholly within Bell County where the population growth had primarily occurred, turning what had been a tail coming out of benchmark District 54 into its own district, also numbered District 54. Because the vast majority of the population in benchmark District 54 had come from Killeen, the Court's District 54 includes 80.2% of the same population as the benchmark District 54.[20] Bell County and Lampasas were then united in District 55 and Burnett County was pulled into District 20, consistent with the State's enacted map.

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[18] Census data indicates that Lampasas County grew from 17,762 to 19,677 and Burnett County grew from 34,147 to 42,750.

[19] Census data indicates that Bell County grew from 237,974 to 310,235, and that the City of Killeen in particular grew from 86,911 to 127,921.

[20] In terms of population, this is not radically different from the enacted plan. The Court's District 54 includes 72% of the same population as the enacted plan.

The dissent criticizes the Court's configuration of District 54, alleging that the Court "created" a coalition district. However, District 54 is not even a performing minority district. Under the criteria used by the United States' expert, Dr. Handley, the minority candidate of choice would be elected 1 out of 5 times using the Department of Justice index. Under an additional index calculated by the office of the Attorney General, the minority candidate of choice would be elected 2 out of 10. Once again, the Court did not intentionally create a minority district, rather the district resulted from demographic changes. The bulk of the growth in Bell County occurred in the City of Killeen, and 80% of that growth was Black or Latino.[21] But under the dissent's theory, the district should not have been created even though it arose naturally because it is primarily minority and allegedly not required under the Voting Rights Act.

In Hidalgo County, the Plaintiffs in this Court object to the configuration of the districts under one-person one-vote and Section 2. In addition, the Department of Justice objected to District 41 in Hidalgo as violating Section 5. In Hidalgo, the State attempted to protect a Republican representative in District 41 by moving over 90% of his constituents out of his district, and under- populating the new District 41 by 7,399 persons, while adjoining Districts 36 and 40 were respectively overpopulated

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[21] Census data can be viewed at http://factfinder.census.gov. Specifically, the Latino population in Killeen increased by 13,876 and the Black population increased by 19,339, while Anglo population decreased by 17,903.

by 4,368 and 5,856. District 39 also is over 7,700 overpopulated in the enacted plan. In addition to the population deviations, the Department of Justice alleges that the substantially reconfigured District 41 no longer allows Latinos the ability to elect the candidate of their choice and therefore causes retrogression. Thus, both the Court map and the dissent map returned Hidalgo County to its configuration in the benchmark with as few changes as possible, shedding any new population into the new District 35.

In Bexar County, District 117 is objected to by the Department of Justice in the D.C. Court as violating Section 5. The Department alleges that the State intentionally reconfigured the district in an effort to trade out mobilized Hispanic voters for Hispanic voters who do not regularly vote. The Department of Justice argues that as a result of the swap, the performance of statewide candidates preferred by Hispanic voters decreases from 60 percent in District 117 in the benchmark plan to 33 percent in the enacted plan. As explained in the Court's November 23, 2011 order, the Court's map returns District 117 to its original performance under the benchmark in order to maintain the status quo until the D.C. Court rules. Further, because District 117 was the only challenged district in Bexar County, the Court endeavored to alter as few of the uncontested surrounding districts as possible.

The dissent argues that this Court improperly used election analysis "as a crystal ball to predict how future elections will turn out," when Section 2 only requires "equality of opportunity, not a guarantee of electoral success." Dkt No. 528, at 22-

23. However there is no Section 2 challenge to District 117, only a Section 5 challenge in the D.C. Court. It is not for this Court to determine whether election retrogression analysis is an appropriate legal standard under Section 5; rather, the D.C. Court has exclusive jurisdiction over that issue. *U.S. v. Bd. of Sup'rs of Warren County*, 429 U.S. at 645 ("What is foreclosed to such district court is what Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General- the determination whether a covered change does or does not have the purpose or effect 'of denying or abridging the right to vote on account of race or color.'").

The remaining challenged districts are District 26 in Fort Bend and District 77 in El Paso. The Court provided an explanation for how it drafted those districts in its November 23, 2011 order.

In sum, the Court crafted a map that gave effect to as much of the policy judgments in the Legislature's enacted map as possible.[22] Although the Court believes that the application of *Upham* deference prior to preclearance defies the plain language of the Voting Rights Act, the legislative intent behind Section 5, existing Supreme Court precedent, and numerous practical realities, the Court concludes that even if *Upham* deference was required at this stage of the proceedings, the Court provided as much deference as possible without

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[22] By the State's own admission, 72 of the districts in the Court plan are substantially similar to the enacted plan. Sup. Ct. Emergency App. at 2, n. 1.

making merits determinations that are beyond the Court's jurisdiction.[23]

IV.

Compliance with the Fourteenth Amendment

Both the State and the dissent have argued that the Court, in crafting a court drawn map, should not take any steps above and beyond what the Legislature took in trying to equalize population. However, there were numerous one-person one-vote challenges to the enacted map.[23] Moreover, as noted above, exigent circumstances required that the Court make changes to uncontested districts in order to ensure whole VTDs.

The Supreme Court has "tolerated" somewhat greater population deviation in a legislatively drawn plan than it would in a court drawn plan. *McDaniel v. Sanchez*, 452 U.S. at 138. Unless there are persuasive justifications, a court drawn plan "must

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[23] Even if three judge courts were required to give *Upham* deference in some cases involving interim maps, under the Supreme Court's decision in *Abrams v. Johnson* that deference is still not appropriate in cases such as this, where "the constitutional violation [] affects a large geographic area of the State because any remedy of necessity must affect almost every district." 521 U.S. 74, 86 (internal quotations omitted).

[23] The following parties have asserted one person, one vote challenges to the State's enacted House plan (not merely certain districts therein), as reflected in their pleadings: (1) MALC (second amended complaint, Dkt. No. 50); (2) Perez plaintiffs (third amended complaint, Dkt. No. 53); (3) LULAC (first amended and supplemental complaint, Dkt. No. 78); and (4) NAACP (amended complaint, Dkt. No. 69).

ordinarily achieve the goal of population equality with little more than de minimis variation." *Connor v. Finch*, 431 U.S. 407, 414 (1977) (quoting *Chapman v. Meier*, 420 U.S. 1, 26-27 (1975)). Thus, this Court strived to achieve *de minimis* population deviation in its independent court drawn plans in order to comply with the one person, one vote principle embodied in the Equal Protection Clause of the Fourteenth Amendment. The population variations that remain in the Texas House plan are the result of the Court's goal of avoiding cuts in county lines, precincts and VTD's.[24]

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[24] Based on information provided by the Texas Legislative Council:

In plan H302, the Texas House plan, the average deviation is 1.81% and there are 24 county line cuts (compared with 24 county line cuts in the State's enacted plan); 19 precinct cuts (compared with 422 precinct cuts in the State's enacted plan); and eight VTD cuts (compared with 412 VTD cuts in the State's enacted plan).

In plan C220, the court-drawn congressional plan, the average deviation is .02%. The court drawn plan contains 23 county line cuts (compared with 33 county lines cuts in the State's enacted plan); ten precinct cuts (compared with 520 precinct cuts in the State's enacted plan), and three VTD cuts (compared with 518 VTD cuts in the State's enacted plan).

With the astronomical number of precinct and VTD cuts in the State's enacted plan (and thus, by implication, the dissent's proposed plan), the dissent's assertion that the court drawn plans, rather than the State's enacted plans, will escalate costs and result in delays in the redrawing of precinct lines doesn't hold water.

IV.

Compliance with the Voting Rights Act

Court drawn redistricting plans must comply with Section 2 of the Voting Rights Act, which prohibits any voting procedure that results in a denial or abridgement of the voting rights of any citizen on account of race, color, or membership in a language minority. 42 U.S.C. § 1973(a). "A violation of § 2 is established by showing that 'based on the totality of the circumstances,' members of a protected class 'have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.'" *Smith v. Clark*, 189 F. Supp. 2d at 534. The Court's plans must also comply with Section 5 of the Voting Rights Act, which means that the plan cannot diminish the ability of minority voters to elect their preferred candidate of choice. 42 U.S.C. § 1973c(b). The core question under the Voting Rights Act is whether minority voters are worse off under the new plan, in comparison with the benchmark plan. *Beer v. United States*, 425 U.S. 130, 140-42 (1976). Under the court drawn plans H302 and C220, the Court is confident that the answer is "No."

The Court has explained how it drew the Congressional districts, and will not digress into the same discussion about C220. *See* Dkt. No. 544. However, the dissent seems concerned that the majority somehow did "too much" in the Texas House plan in an effort to comply with the Voting Rights Act, so the Court will discuss the Texas House map in more detail.

As previously mentioned, the Court set out to preserve all fifty (50) minority opportunity districts as they existed in the benchmark plan for the Texas House of Representatives. The Court also sought to avoid the legal challenges that had been made to the State's enacted plan. In drawing the map to meet these goals, the Court stayed as close to benchmark configuration as possible, while accounting for population growth. The Court drew the districts as reasonably compact as possible, rather than fracturing them. In applying these principles, it was relatively easy to preserve the existing minority districts and avoid the challenges that had been made to the State's enacted map. In fact, it became clear that a map drawer must go out of his way to fracture some of the districts in the manner reflected in the State's enacted map. *See* Dkt. No. 528, p. 8 (illustrations of HD 77 - the "antlers") and p. 11 (illustrations of HD 26 - the "faucet"). By keeping the districts reasonably compact, respecting the population in the districts, and keeping them close to benchmark, the Court was able to draw a map that rose above the type of challenges lodged against the State's enacted map.

After the entire map had been drawn, the Court did not know how many minority opportunity districts existed in its map. With the assistance of staff at Texas Legislative Council (TLC), the Court reviewed the relevant REDAPPL reports, including but not limited to the RED 202 report, which reflects voter registration and turnout, and an additional report prepared specially for the Court, which reflects citizen voting age population by race and ethnicity. To the extent possible, and with the

assistance of TLC, the Court also analyzed the districts in its map under the criteria used by the United States' expert, Dr. Handley and an additional index calculated by the office of the Attorney General. *See* Dkt. No. 79, Dr. Lisa Handley's House Analysis, Exh. 4, filed in *State of Texas v. United States*, Civil Action No. 11-CV-1303, in the District Court for the District of Columbia. With this analysis, the Court was able to confirm that it had preserved the 50 pre-existing minority opportunity districts, which included 33 Hispanic majority minority districts, 12 African-American majority minority districts, and five coalition districts. *See id.* The Court was also able to confirm, with relative certainty, that three additional districts would likely perform as minority opportunity districts. Those districts included House District 78 in El Paso County, a Hispanic majority minority district; District 144 in Harris County, an African-American majority minority district, and District 107 in Dallas County, which may be described as a coalition district. There is nothing to support a finding that minority voters in Districts 26, 54 and 149 will have the ability to elect their candidate of choice, and those districts cannot be described as minority opportunity districts. Thus, with 50 pre-existing minority opportunity districts and three additional districts that can be described as minority opportunity districts, the majority's court drawn plan includes 53 minority opportunity districts (one more than the dissent's proposed map). The Court can comfortably conclude that minorities are not worse off under the court drawn plan for the Texas House of Representatives, and it has successfully

complied with Sections 2 and 5 of the Voting Rights Act.

Conclusion

This Court cannot predict or control the outcome of any elections, nor can it control or predict how the D.C. Court may rule on any preclearance issues. The Court's authority at this juncture is limited to drawing a court-ordered redistricting plan, and the Court has been very constrained in exercising that authority.

SIGNED by the majority of the Court this 2nd day of December, 2011.

/s/
ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

/s/
XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

JERRY E. SMITH, Circuit Judge, dissenting:

For the reasons given in my dissent, I continue respectfully to disagree with the majority's ill-advised, though well-intentioned, imposition of an interim redistricting plan for the Texas House of Representatives.

The majority's newly-revealed zeal to press for sweeping relief at this interim stage of the case is unseemly at best and downright alarming at worst. The majority concedes that its order implementing the plan is on appeal. Its statement in the now-appealed order, to the effect that it would file a supplemental opinion, does not change the fact that

the order is already in the good hands of the Supreme Court.

This "Supplemental Opinion" has the smell of a brief on appeal. That is not the role of a trial court. It would be equally inappropriate for me now to point out the flaws in this latest submission. The talented attorneys on each side are fully capable of explicating the legal issues that will be considered, and if the Supreme Court needs further explanation from this three-judge district court, it will ask. If the majority feels insecure in the justification it gave in its initial offering, that is the stuff of appellate briefing by the parties' attorneys, not judges and their law clerks.

In my almost twenty-four years as a judge on the court of appeals, I cannot recall ever seeing an unsolicited "supplemental opinion" come flying over the transom from a district judge desperate to lend further support for a shaky decision. We are judges, not advocates.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-360

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/27/11
Document 546

ORDER

Defendants' motion to stay implementation of the court-drawn interim congressional redistricting plan pending appeal (Dkt. No. 545) is DENIED for the reasons given in this Court's Order dated November 26, 2011 (Dkt No. 544). As stated in that Order, when there is no other legally enforceable plan in effect, this Court is required to craft an independent court-drawn interim map. The State has misinterpreted the applicable case since the inception of the interim court plan process. The State insists that the Court must simply adopt its enacted unprecleared plan, making only minimal changes, if any, to "remedy" any constitutional or statutory violations. The State continues to rely on *Upham v. Seamon*, 456 U.S. 37, 102 S.Ct. 1518 (1982), which is clearly inapposite to the situation that the Court faces herein. In *Upham*, the district

court was faced with drawing a remedial plan after preclearance of the State's enacted plan had been denied. In the remedial phase, under *Upham*, the district court's task would be limited to remedying the portions of the map known to be retrogressive or otherwise violating the Voting Rights Act or the U.S. Constitution. Had the State chosen the path of administrative preclearance through the Department of Justice, we would perhaps be in the remedial phase right now. However, the State chose to file a lawsuit in the United States District Court in the District of Columbia, which is still pending, and we are not in the remedial phase. Instead, we are in an interim phase where the Court has been placed in the position of crafting an independent court drawn plan that complies with the U.S. Constitution and Sections 2 and 5 of the Voting Rights Act. In doing so, the Court is precluded from simply adopting the State's enacted plan or deferring to the challenged plan, as doing so would make the preclearance process meaningless and constitute a de facto ruling on the merits of the various legal challenges to the State's plan. *See Lopez v. Monterey County*, 519 U.S. 9, 117 S.Ct. 340 (1996)(district court erred when it failed to independently craft an electoral plan and instead adopted the County's proposal, which required preclearance); *see also McDaniel v. Sanchez*, 452 U.S. 130, 101 S.Ct. 2224 (1981)(district court erred in adopting the County's plan, which required preclearance). It is undisputed that the "failure to obtain either judicial or administrative preclearance renders the [voting] change unenforceable," *Clark v. Roemer*, 500 U.S. 653, 111 S.Ct. 2096, 2101 (1991), and the Court

cannot simply adopt an unprecleared redistricting plan, in whole or in part, with the signatures of a few judges sitting in Texas.

Further, the Court's order is not akin to a preliminary injunction as the State suggests. The only request for injunctive relief that has been raised in this lawsuit is the plaintiffs' request that the State's enacted plan be enjoined from implementation because it has not been precleared. *See Clark*, 111 S.Ct. at 2101 (if there has been no preclearance, plaintiffs are entitled to an injunction prohibiting the State from implementing the changes). However, since the inception of this lawsuit, the State has admitted that its enacted plan must be precleared prior to implementation. Yet it has persisted in trying to avoid preclearance altogether by demanding that its unprecleared plan be adopted by the Court as an interim court drawn plan. Again, the dictates of the U.S. Supreme Court preclude this Court from doing so.

The dissent has somewhat embraced the State's arguments, and also relies on *Upham*, even though this Court has not arrived at the remedial stage of these proceedings. Likewise, the dissent tries to distinguish *Lopez* based on the procedural posture of the preclearance proceedings in this matter. However, there was no preclearance in *Lopez* and there is no preclearance in this case. At the end of the day, no preclearance means no preclearance, and *no enforceable plan. The dissent also fails to* appreciate that the Court has drawn an independent redistricting plan without ruling on any of the various legal challenges, and it has considered the parties' legal challenges only for the purpose of

avoiding the same legal challenges to the court drawn map. *See Conner v. Waller*, 421 U.S. 657, 95 S.Ct. 2003 (1975)(the district court cannot decide the constitutional challenges to the challenged, unprecleared plan). The Court's congressional plan clearly rises above the myriad of challenges to the State's enacted plan and allows a free and fair election in 2012.

In conclusion, the State claims that it will be irreparably injured if a stay is not granted. However, the individuals who would suffer irreparable injury if the stay were granted are the citizens of Texas, by being deprived of the opportunity to vote in the upcoming election under the schedule currently in place.

SIGNED this 27th day of November, 2011.

/s/

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

/s/

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

JERRY E. SMITH, Circuit Judge, dissenting:

Because a stay of the orders implementing interim plans for the 2012 elections is needed to allow orderly review and clarification of critical legal issues, and because a stay will not harm any party, I respectfully dissent from the denial of a stay. In its order announcing an interim redistricting plan for the Texas House of Representatives, the majority acknowledged that "these are difficult issues and

reasonable minds can disagree." It is therefore puzzling that the majority is unwilling to stay its order so that those difficult issues can be addressed on appeal before the announced interim plans are implemented.

There are myriad issues to be decided regarding interim, court-ordered redistricting plans. Because these matters are usually raised only in the wake of the decennial census, the caselaw is somewhat sparse and often murky. Questions that are not addressed now, before any part of these interim plans are implemented, might not be answered for yet another ten years or more. That is why the more orderly course is for this court to stay its proceedings, before filing 5 for office begins in Texas on November 28, so that the Supreme Court will have sufficient time to address the complex legal issues that apply to interim plans.

Here are the issues most begging for resolution or explication:

1. In fashioning a temporary interim redistricting plan, how much deference should a court give to state-enacted legislative plans where a determination for preclearance has been submitted but is pending in: (1) districts that have not been specifically challenged; (2) districts that have been challenged under novel legal theories; (3) districts that have been challenged but as to which the challenges are unlikely to succeed on the merits; and (4) districts that have been challenged where the claims have a likelihood of success on the merits? In *Upham v. Seamon*, 456 U.S. 37 (1982), the Court directed lower courts to modify a state's legislative

plans only where absolutely required by law in a situation in which a determination on preclearance had been made and two of the districts in the State's plan had failed preclearance. *See also White v. Weiser*, 412 U.S. 783, 794-95 (1973). In contrast, the Court in *Lopez v. Monterey County*, 519 U.S. 9 (1996), rejected a lower court's wholesale implementation of a county's plan as an interim plan where the county had failed even to submit the plan for preclearance, defying a court order and despite being on notice for five years.

The instant case falls somewhere in between the situations in *Seamon* and *Lopez*: The State of Texas here has not attempted to frustrate or obviate the preclearance process but instead has timely submitted its maps to the D.C. District Court (unlike the county in *Lopez*), but the D.C. court has not yet ruled on preclearance (unlike the Department of Justice in *Seamon*, which had ruled on preclearance). Although the majority, as to the Texas House of Representatives, contends that the many challenges to the State's plan makes it "impossible to give substantial deference to the State's plan," the very existence of my proffered alternative plan, H299, shows that it is possible to give more deference than the majority did while still taking the plaintiffs' challenges seriously. It would be of greater assistance for the Supreme Court to provide guidance on this issue.

2. In a court-ordered interim plan, how much population deviation is permissible in districts unchallenged by the plaintiffs or districts without meaningful one-person one-vote issues? The majority, relying on *Connor v. Finch*, 431 U.S. 407,

414 (1977), modified the State's enacted districts to bring them into *de minimis* deviation, even in districts unchallenged by the plaintiffs.

In contrast, my map left the unchallenged districts, which had population deviations within the legally permissible range for legislatures (but were not *de minimis*), intact, in accordance with the guidance given in *Seamon*, which held that the stricter *Connor* standard cannot be the sole basis for modifying a state's redistricting, but instead is applicable only where a specific violation was found and a remedial district was being drawn. *Seamon*, 465 U.S. at 43.

3. For purposes of section 2 and section 5 of the Voting Rights Act, is election "performance" relevant or, or instead is the relevant measure the percentage of citizen voting age population? The majority redrew Districts 77 (in El Paso County) and 117 (in Bexar County) because, under, the State's plan, the district does not "perform" often enough (*i.e.*, it was likely to elect a Republican) despite Hispanics' comprising an overwhelming majority of the citizen voting age population in those districts (73% and 63%, respectively). In contrast, I read the section 2 caselaw to say that performance is not a relevant measure, *Johnson v. De Grandy*, 512 U.S. 997, 1014 n.11 (1994), but rather the relevant measure is the majority-minority requirement, *Barlett v. Strickland*, 556 U.S. 1, __, 129 S. Ct. 1231, 1244-45 (2009).

I have not found, nor has the majority cited, any caselaw to the contrary. That said, there is little to no guidance about whether a court should consider

performance in a section 5 retrogression or discriminatory intent analysis, so it would be helpful for the Supreme Court to provide clarity on this question.

4. May a court order the creation of minority "coalition" districts in an interim plan, and, if so, under what circumstances? Though the Court in *Bartlett* rejected the contention that "cross-over" districts are covered by section 2, some of its language calls into question whether "coalition" districts are similarly covered (although the Court did expressly reserve the question). The majority created such coalition districts in Dallas County (HD 107), Fort Bend County (HD 26), and Bell County (HD 54). Districts 26 and 54 relied on Asian votes to form a "coalition," despite the lack of evidence showing cohesion between Asians and Blacks or Hispanics in voting.

Though the majority contends these new coalition districts arose "naturally" from a restoration to the *status quo*, it is hard to see how that could be the case: For example, HD 107 was substantially reconfigured from the *status quo* (composed of less than 40% of HD 107 in the benchmark plan) to exclude Anglo voters and include minority voters, reducing the Anglo citizen proportion by 33%. Similarly, Districts 26 and 54 were altered from the *status quo* by removing almost exclusively white populations instead of reducing the population in a race-neutral manner. Although my proposed alternate plan creates a new coalition district in Tarrant County, it is the identical new district created by the State (and dismantled by the majority), and the State has unquestionable latitude

to create such districts so long as it does not subordinate traditional redistricting principles to race.

The lack of clarity regarding coalition districts is evidenced by a circuit split on whether they may ever be required. The Fifth Circuit has treated the question as one of fact, holding that it is not clearly erroneous for a district court to find the first Gingles requirement satisfied by aggregating minority groups to reach the 50% threshold. *See Campos v. City of Baytown, Tex.*, 840 F.2d 1240 (5th Cir. 1988). The Sixth Circuit, however, has held that the text of the VRA does not allow its application to coalitions of minority groups. *See Nixon v. Kent Cnty.*, 76 F.3d 1381 (6th Cir. 1996). This issue cries out for clarification.

In its motion for stay, the State concedes that it may become necessary to delay the primary elections pending appellate review of issues regarding the interim plans. Indeed, Texas has some of the earliest primaries—perhaps the very earliest—in the United States. A delay of even a few weeks would still provide ample time for orderly primaries and runoffs well in advance of the November elections. But long before any such adjustment might become necessary, the first step should be for entry of a stay of this court's orders imposing interim redistricting plans for the Texas House of Representatives and the Texas Senate and, once this court imposes an interim Congressional plan, a stay of that order as well. Likewise, a temporary stay should be entered of candidate filing and qualifications deadlines for all elective offices so that filing does not begin on November 28.

The majority's refusal to enter a stay under these compelling circumstances is error. I therefore respectfully dissent.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-360

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/26/11
Document 544

ORDER

The court adopts PLAN C220 as the interim plan for the districts used to elect members in 2012 to the United States House of Representatives. A map showing the redrawn districts in PLAN C220 is attached to this Order as Exhibit A. The textual description in terms of census geography for PLAN C220 is attached as Exhibit B. The statistical data for PLAN C220 is attached as Exhibit C. This plan may be also viewed on the DistrictViewer website operated by the Texas Legislative Council (http://gis1.tlc.state.tx.us/) under the category "Court-ordered interim plans." Additional data on the Court's interim plan can be found at the following website maintained by the Texas Legislative Council under the "Announcements" banner: http://www.tlc.state.tx.us/redist/redist.htm.

The Court thanks the staff at the Texas Legislative Council for their assistance in preparing this map.

This interim map is not a ruling on the merits of any claims asserted by the Plaintiffs in this case, any of the other cases consolidated with this case, or the case pending in the United States District Court for the District of Columbia.

Background

The decennial census was conducted last year, pursuant to Article I, § 2 of the United States Constitution. The census data showed that the population of Texas had increased from the 2000 population of 20,851,820 to 25,145,561 for 2010, an increase of about 20.6%.[1] It is undisputed that minority population growth, especially in the Hispanic community, accounted for much of the population increase. Specifically, the Hispanic population in Texas grew by 2,791,255 and the African-American population grew by 522,570, while the Anglo population increased by fewer than 465,000 people.[2] The population changes mean that the current congressional districts are malapportioned and in violation of the one-person, one-vote principle,[3] and the population increase

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[1] http://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf

[2] Texas State Data Center: http://txsdc.utsa.edu/Data/Decennial/2010/Redistricting/Profiles.aspx

[3] *See Connor v. Finch*, 521 U.S. 74, 98 (1977) (the constitutional guarantee of one person, one vote requires congressional districts to achieve population equality "as nearly as is practicable") (quoting *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964)).

entitles the State of Texas to four additional seats in the House of Representatives. Thus, the State of Texas undertook redistricting efforts to reapportion seats. See U.S. CONST. ART. I, § 2.

The 82nd Texas Legislature, during a special session, enacted S.B. 4 on June 24, 2011. Governor Rick Perry signed the bill into law on July 18, 2011. The State's enacted plan drew one new minority opportunity district – district 35 – along the I-35 corridor between Travis County and Bexar County, but drew no other additional minority opportunity districts.

A number of constitutional and statutory challenges have been asserted against the State's enacted map. Plaintiffs assert that the State failed to draw additional required minority opportunity districts in the Dallas-Fort Worth metroplex, the Houston area, and West/South Texas, despite the substantial minority population growth there and satisfaction of the requirements for drawing such districts under Section 2 of the Voting Rights Act. Plaintiffs allege that the State racially gerrymandered districts to avoid drawing new minority opportunity districts. Plaintiffs further complain that the State intentionally weakened district 23, a minority opportunity district, to protect a Republican incumbent, and that the new configuration of district 27 dilutes Hispanic voting strength. In addition, the Rodriguez Plaintiffs complain that the enacted map intentionally dismantled a functioning "tri-ethnic coalition" district in Travis County.

Plaintiffs further challenge and seek to enjoin implementation of the State's enacted plan under Section 5 of the Voting Rights Act because it has not received preclearance. It is undisputed that Texas, as a jurisdiction with a history of racial discrimination in voting, is subject to the preclearance requirements of Section 5 of the Voting Rights Act, as amended and codified at 42 U.S.C. § 1973c.[4] Until a legislative plan obtains such preclearance, it cannot be effective as law and cannot be implemented.[5]

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[4] As the Supreme Court observed in its recent opinion concerning prior redistricting efforts in Texas, "The District Court recognized 'the long history of discrimination against Latinos and Blacks in Texas,' and other courts have elaborated on this history with respect to electoral processes:

> 'Texas has a long, well-documented history of discrimination that has touched upon the rights of African–Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process. Devices such as the poll tax, an all-white primary system, and restrictive voter registration time periods are an unfortunate part of this State's minority voting rights history. The history of official discrimination in the Texas election process—stretching back to Reconstruction—led to the inclusion of the State as a covered jurisdiction under Section 5 in the 1975 amendments to the Voting Rights Act. Since Texas became a covered jurisdiction, the Department of Justice has frequently interposed objections against the State and its subdivisions.'"

LULAC v. Perry, 548 U.S. 399, 439-40 (2006) (citations omitted).

[5] *Clark v. Roemer*, 500 U.S. 653, 646 (1991) (failure to obtain either judicial or administrative preclearance renders the voting change unenforceable); *see also White v. Lipscomb*, 437 U.S. 535, 542 (1978) ("A new reapportionment plan enacted by

The Stated filed a lawsuit to obtain preclearance of its enacted plan on July 19, 2011, and that suit is currently pending before a three-judge court in the United States District Court for the District of Columbia (hereinafter "the D.C. Court").[6] In that lawsuit, the State of Texas has asked the D.C. Court to declare that the enacted plan complies with Section 5 of the Voting Rights Act, meaning that it "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color" and that it may be implemented.[7] The State of Texas moved for summary judgment on its preclearance request on September 14, 2011.[8] After receiving briefing and hearing oral argument, the D.C. Court denied the motion for summary judgment on November 8, 2011.[9] The D.C. Court's order states the following:

> Having carefully considered the entire record and the parties' arguments, the Court finds and concludes that the State of Texas used an improper standard or methodology to determine which districts

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a State . . . will not be considered 'effective as law' until it has been submitted and has received clearance under § 5. Neither, in those circumstances, until clearance has been obtained, should a court address the constitutionality of the new measure.") (citations omitted).

[6] *State of Texas v. United States of America & Eric Holder*, Civ. A. No. 1:11-CV-1303 (D.D.C.).

[7] *Id.*, docket no. 1 (Original Complaint) at ¶ 48.

[8] *Id.*, docket no. 41 (Motion for Summary Judgment).

[9] *Id.*, docket no. 106 (Order on State's Motion for Summary Judgment).

> afford minority voters the ability to elect their preferred candidates of choice and that there are material issues of fact in dispute that prevent this Court from entering declaratory judgment that the three redistricting plans meet the requirements of Section 5 of the Voting Rights Act. *See* 42 U.S.C. 1973c.

Texas v. United States, Civ. A. No. 1:11-CV-1303 (D.D.C.), docket no. 106 (Order on State's Motion for Summary Judgment) at 2. The D.C. Court further noted that, without preclearance, this Court "must designate a substitute interim plan for the 2012 election cycle by the end of November." *Id.* This Court is therefore faced with the "unwelcome obligation of performing in the legislature's stead."[10]

Discussion

In drawing this Congressional map, all proposed maps, including the State's enacted map, were considered.[11] The Court sought to create a plan that maintains the status quo pending resolution of the preclearance litigation to the extent possible,

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[10] *Connor v. Finch*, 431 U.S. 407, 415 (1977); *White*, 437 U.S. at 542 ("Pending such [Section 5] submission and clearance, if a State's electoral processes are not to be completely frustrated, federal courts will at times necessarily be drawn further into the reapportionment process and required to devise and implement their own plans.").

[11] *Smith v. Cobb County*, 314 F. Supp. 2d 1274 (N.D. Ga. 2002) ("That a court must not act as a rubber stamp does not mean, however, that the court cannot consider the proposed legislative plan, just as it considers any other plans submitted to it.")

complies with the United States Constitution and the Voting Rights Act, and embraces neutral principles such as compactness, contiguity, respecting county and municipal boundaries, and preserving whole VTD's.[12] The Court also sought to balance these considerations with the goals of state political policy.

Although a court-drawn plan is not subject to Section 5 preclearance, "in fashioning the plan, the court should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases."[13] The purpose of Section 5 "has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."[14]

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[12] Of course, population changes and the need to draw four new districts required altering the status quo to some degree. The Court notes that all population shifts were done in terms of VTD's. A "VTD" is a voter tabulation district and is the functional equivalent of a voting precinct. The Court minimized splits to VTD's and precincts as much as possible. *See Vera v. Bush*, 933 F. Supp. 1341, 1347 (S.D. Tex. 1996) ("Moreover, the Court's remedial plan addresses the single most troubling and realistic hurdle, the potential splitting of voter tabulation districts ('VTD's'), by avoiding that consequence in all but a small handful of voting precincts.").

[13] *Abrams v. Johnson*, 521 U.S. 74, 95-96 (1997) (quoting *McDaniel v. Sanchez*, 452 U.S. 130, 149 (1981)). This exception applies to judicial plans devised by the Court, and thus this Court is not permitted to simply implement the Legislature's enacted plan because it has not received preclearance. *See Abrams*, 521 U.S. at 95.

[14] *Id.* (quoting *Beer v. United States*, 425 U.S. 130, 141 (1976)).

It is undisputed that the appropriate benchmark for determining retrogression under Section 5 is the plan currently in effect. Thus, to comply with Section 5 by ensuring that no minority voters suffer a retrogression in their voting strength as compared to the benchmark and to generally maintain the status quo pending resolution of the preclearance litigation in the D.C. Court, the Court aimed to maintain the current minority opportunity districts from the benchmark plan. The Court accomplished this goal with regard to the existing districts in Houston and Dallas, but large population changes and the need to draw four additional districts nevertheless required significant changes in other districts.

In accordance with the goal of maintaining the status quo and avoiding retrogression, districts 9, 18, and 29, the three existing minority districts in the Houston metropolitan area, were drawn as they are in the benchmark, with only the necessary modifications to account for population inequality.[15]

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[15] Excess population was moved out of districts 9 and 18. 14,785 people were moved from district 9 to district 7, and 420 people were moved from district 9 to 22. No people were moved into district 9, and no people were moved out of district 29. 21,421 people were moved from district 18 into district 29, and 1,212 people were moved from district 18 into district 2. No people were moved into district 18.

In its objections, the State asserts that the Court has reduced the number of African-American plurality districts because the Hispanic voting age population (38%) in district 9 would slightly exceed the African-American voting age population (37%). However, the African-American *citizen* voting age population ("CVAP"), which is the relevant measure for voting opportunity, still largely exceeds the Hispanic voting age

Because drawing an additional district in the Houston metropolitan area would have significantly upset these districts rather than maintain them, the Court elected to draw new districts 34 and 36 around Houston to reflect population growth, as the Legislature did, while keeping districts 9, 18, and 29 substantially unchanged from the benchmark and drawing districts 2, 22, and 14 similar to the enacted plan.[16]

Thus, as noted, the placement and configuration of the Court's new districts 34 and 36 are similar to the placement of two new districts in the Legislature's enacted plan. New district 36 closely resembles the Legislature's enacted district 36 geographically, and there is a 76.7% population overlap. Much of the difference between the Court's plan and the enacted plan is attributable to maintaining district 29 as in the benchmark to avoid retrogression and maintain the status quo.[17]

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population in district 9 – African-American CVAP is 49% and Hispanic CVAP ("HCVAP") is 18.8%.

[16] The Court could have drawn a new district in the Houston metropolitan area based on population growth and pushed the existing districts outward. However, the Court chose the less disruptive route of maintaining the current districts as much as possible. This choice also resulted in more overlap between the Court's plan and the State's enacted plan. For example, district 2 in the Court's plan has a 73% population overlap with the enacted plan; district 22 has a 84.9% population overlap; and district 14 has a 97.2% population overlap.

[17] The addition of district 36 necessarily pushed former district 8 to the west and accounts for most of the change to that district.

The Court's placement of new district 34 is also similar to the Legislature's placement of a new district, labeled 27 in the enacted map. The Legislature took what was previously district 27, removed Nueces County and extended the district to the North, renaming it district 34. District 27, which was actually the new district in the State's enacted map, was placed between Houston and Austin to the south of district 10, the same general area in which the Court has placed its new district 34.[18] By creating the new district 34 that extends north, the Court was able to restore district 27 to its benchmark configuration as a South Texas district, extending south from Nueces County with Cameron County as its anchor at the border.

Further consistent with Section 5 and the goal of maintaining the status quo, existing Latino opportunity districts in South and West Texas[19] were generally drawn with their benchmark configurations as a starting point, but due to population changes and the addition of new districts 34 and 35, significant changes were necessary.

To begin, district 16 in the El Paso area was overpopulated, and that excess population (58,937 people) had to be moved into district 23 to the east

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[18] District 10 was pushed somewhat north as a result of the addition of district 34. District 17 was kept substantially similar to benchmark.

[19] Districts with HCVAP in excess of 50% included districts 15 (South Texas), 16 (El Paso), 20 (San Antonio), 23 (Southwest Texas), 27 (South Texas), and 28 (South Texas).

because it is the only adjoining district.[20] As discussed below, this population shift, the addition of new districts, and other changes in Central and South Texas resulted in more significant changes to district 23.

Further, it is undisputed that much of Texas's overall population growth occurred in Bexar County and Travis County and areas along the I-35 corridor. Even the Legislature's enacted map placed a new minority opportunity district in that area. Accordingly, consistent with the Legislature's choice to create a new Latino opportunity district and with its general choice of location in the enacted plan, the Court drew new district 35 as a Latino opportunity district, anchored in Bexar County and generally extending northeast along the I-35 corridor to reflect the population growth in that area.[21]

Southern Bexar County was removed from district 23 to accommodate the creation of new district 35. This was a very large population loss for district 23 (269,784 people), which was largely offset with population from district 20. Further, district 23 was extended to the east into Frio and LaSalle Counties, as well as to the north into Loving, Winkler, Ward, Crane, Upton, Reagan, and

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[20] Although objections have been raised to the fact that the City of El Paso is split in the Court's map, the Court notes that the City of El Paso is also split in both the State's enacted map and C216, the map proposed by the dissent (though to a lesser degree).

[21] District 35 includes Atascosa County, southern Bexar County, parts of Guadalupe, Comal, and Hays County along I-35, and Caldwell County.

Schleicher Counties, and Sutton County was united into district 23.

Despite the significant changes to district 23's population, the Court sought to maintain its demography and election performance at the benchmark levels in keeping with the principle of maintaining the status quo.[22] The State contends that the Court has decreased the performance of district 23, but the Court respectfully disagrees. Reports run by the Texas Legislative Council for the Court in preparing the map and in response to the State's comments demonstrate that district 23 maintains its benchmark performance level. Further, although the dissent apparently accepts the State's position that the performance of CD23 has declined, he argues that "the court redraws the district to ensure that it qualifies as a Latino opportunity district, relying on 'performance' (*i.e.*, probability of electing a Democrat) rather than HCVAP as the factor defining a Latino opportunity district." However, the Court has not relied on performance to define this or any other Latino opportunity district. Rather, the Court has maintained the HCVAP in district 23 above 50% and close to benchmark levels, without decreasing the percent of Spanish-surname voter registration ("SSVR") and without lowering performance.[23] This

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[22] District 23 has only a 61.2% population overlap with its benchmark population.

[23] In the benchmark, district 23 was 62.8% Hispanic VAP, 58.4% HCVAP, and 52.0% 23 SSVR, and the Court's district 23 is 62.6% HVAP, 57.3% HCVAP, and 52.2% SSVR. The Texas Latino Redistricting Task Force recognizes in its comments that "[t]he district provides Latino voters the same opportunity

is consistent with the Court's goal of generally maintaining the status quo. The Court has nowhere expressly sought to increase the performance of any opportunity district above benchmark. Nor has the Court engaged in partisan gerrymandering as suggested.

The significant population growth in the northwestern part of district 25, anchored in Travis County, allowed that district to be pulled back from its benchmark configuration to the northwest in Travis County and western Hays County. This in turn allowed Caldwell and eastern parts of Hays County to be placed into the new district 35. Further, this pulling back of district 25 allowed Bastrop, Fayette, Gonzales, Lavaca, and Colorado Counties to be placed into the new district 34.[24]

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to elect the candidates of their choice that they had in the benchmark plan." Docket no. 537.

[24] The Court makes no ruling on the merits of the Rodriguez Plaintiffs' claims based on the intentional dismantling of the "tri-ethnic" coalition (based in Travis County) in district 25. The Court acknowledges that Section 2 of the Voting Rights Act does not mandate preserving crossover districts. *Bartlett v. Strickland*, 556 U.S. 1, __, 129 S. Ct. 1231, 1248 (2009) (Kennedy, J.). However, preservation of such an already existing district by the Court when drawing an interim plan is certainly permissible. Further, under the more stringent requirements of Section 5, the presence of such districts is relevant for the Section 5 retrogression analysis. *See id.* at 1249 (citing *LULAC v. Perry*, 548 U.S. 399, 446 (2006) (Kennedy, J.) (noting that the presence of districts "where minority voters may not be able to elect a candidate of choice but can play a substantial, if not decisive, role in the electoral process" is relevant to the Section 5 analysis). In keeping with the goals of maintaining the status quo and complying with Section 5 in

The downtown core and much of the population from the existing Latino opportunity district 20 was maintained, but as noted, a significant part of its western population was shed into district 23 to offset district 23's loss of southern Bexar County. Further, 29,922 people were moved from district 20 into the new district 35. In addition, district 20 was pushed a little to the north and picked up population from district 21. Despite its population changes, district 20 maintains its character as a performing Latino opportunity district.[25]

The creation of districts 34 and 35 affected the South Texas districts (15, 27, and 28) to some degree, but they were maintained as close to benchmark as possible. District 27 was maintained very closely to benchmark geographically, although Cameron County was united into district 27, while part of Nueces County was removed and placed into the new district 34. District 27 derives 86.2% of its population from its prior population, and maintains its character as a performing Latino opportunity district.

District 15, which derives 85% of its population from its prior population, is narrowed. It no longer extends into Cameron County and swaps out some portions of Hidalgo County with district 28. Further, Duval County, Live Oak County, Karnes County, and Dewitt County were moved from the western

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drawing this map, the Court has preserved district 25 as a crossover district.

[25] District 20 pulls 76.8% of its population from its prior population.

part of district 15 into district 28. District 15 maintains its character as a performing Latino opportunity district.

District 28 no longer extends into Bexar County, since that population was placed into the new district 35, and, as described above, district 28 was generally shifted to the east. District 28 pulls 86.1% of its population from its prior district and maintains its character as a performing Latino opportunity district.

In the Dallas-Fort Worth area, to maintain the status quo and comply with Section 5, the Court maintained the current minority opportunity district in Dallas County – district 30 – at its benchmark configuration except to equalize population.[26] The Court kept the general shapes of surrounding districts 5, 6, 24, and 32 similar to the State's enacted plan. The fourth new district – district 33 – was drawn in the Dallas-Fort Worth metroplex to reflect population growth in that area. That is also generally where the Legislature added its new district 33, but the Court's new district 33 is more compact and located within Tarrant County, where the growth in urban population occurred.

Because much of the growth that occurred in the Dallas-Fort Worth metroplex was attributable to minorities, the new district 33 was drawn as a

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[26] District 30 draws 100% of its population from its prior population, while 7,763 people were moved from district 30 to district 6 to equalize population.

minority coalition opportunity district.[27] United States Representative (and House Judiciary chair) Lamar Smith suggested that the Legislature draw a new minority opportunity district in the Dallas-Fort Worth area. The State argues that the Legislature attempted to do so but was allegedly unable. According to 2010 census figures, African-Americans and Hispanics account for at least 41% of the current total population of Tarrant County, and accounted for approximately 77% of the population increase in the County between 2000 and 2010.[28] The creation of district 33 required changes to the surrounding districts, including pushing district 12 to the west.[29]

The Court notes that, after maintaining current minority districts and adding in the new districts, it inserted a number of districts with minimal change from the enacted plan where possible. These include districts 1, 3, 4, 5, 8, 11, 13, 14, and 19.[30] Thus, nine

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[27] African Americans and Hispanics account for approximately 60.7% of the voting age population and 50.5% of the citizen voting age population of new district 33.

[28] Census data can be viewed at http://factfinder.census.gov. In addition, the Texas State Data Center website shows that there are 482,977 Hispanics and 262,522 African-Americans (alone), and the total population of Tarrant County is 1,809,034. The African-American population numbers do not include persons of more than one race. This data can be viewed at: http://txsdc.utsa.edu/Resources/Decennial/2010/Redistrict/pl94-171/profiles/county/table2.txt

[29] With regard to complaints that the Court's map splits the City of Arlington, the City was split in the benchmark plan.

[30] Based on 2010 census data as shown in the Red-340 report, district 1 has a 97.2% population overlap with district 1 in the enacted plan. District 3 has a 97.8% population overlap with the enacted plan. District 4 has a 96.5% population overlap

of thirty-six districts (25% of the districts) are substantially similar to those in the enacted plan.

The dissent's comments come as some surprise to the Court, and are clearly a last-minute gathering of public comments that were submitted to the Court after the plan, to which the dissent agreed at the time, was released for comments and objections. Many of the dissent's comments do not appear to be based on any kind of independent analysis, and the dissent simply accepts each of the objections without any apparent verification or confirmation.

The dissent claims that plan C216 is a better redistricting plan because it is "bipartisan."[31] But plan C216 was largely driven by political ambition and raises various constitutional concerns. First and foremost, the map drawer for C216 testified that he used the State's unprecleared map as a template to draw the map even though the Department of

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with the enacted plan. District 5 has a 94% population overlap with the enacted plan. District 8 has a 92.7% population overlap with the enacted plan. District 11 has a 96.7% population overlap with the enacted plan. District 13 has a 98.6% population overlap with the enacted plan. District 14 has a 97.2% overlap with the enacted plan. District 19 has a 99.2% population overlap with the enacted plan.

[31] Calling the map "bi-partisan" goes a bit far. It was proposed by two members of Congress, a Republican and a Democrat, who both sought changes to their own districts. Some other members of Congress whose districts were slightly improved under C216 as opposed to the enacted plan supported C216 based on the improvements to their districts, but that does not mean that they supported C216 over other plans offered by the Plaintiffs, nor does it mean that they had any interest in C216's treatment of areas other than their districts.

Justice has claimed that the State's enacted map was drawn with discriminatory intent. Because plan C216 is largely based on the State's enacted plan, Plaintiffs have argued that it is, in essence, a legislative plan that should be subject to preclearance. *Lopez v. Monterey County*, 519 U.S. 9, 22, 117 S. Ct. 340, 348 (1996) ("[W]here a court adopts a proposal 'reflecting the policy choices . . . of the people [in a covered jurisdiction] . . . the preclearance requirement of the Voting Rights Act is applicable.")(quoting *McDaniel v. Sanchez*, 452 U.S. 130, 153, 101 S. Ct. 2224, 2238 (1981)). Plan C216 is a thinly disguised version of the State's unprecleared plan, which is challenged as being discriminatory in both purpose and effect.

The Court further notes that the new district 35 in plan C216, which purports to be a Latino opportunity district, has less than 50% HCVAP and therefore is not a Latino opportunity district. Despite the obvious inconsistency, the dissent criticizes the Court's map on the basis of LULAC's assertion that it dilutes Latino voting strength by not increasing the number of Latino opportunity districts, yet espouses adoption of a plan that creates *fewer* Latino opportunity districts than the Court's plan.

Summary

In sum, the Court has taken on the "unwelcome obligation" of drawing this interim plan solely because the State has failed to obtain the necessary preclearance of its enacted plan. In drawing an independent plan consistent with the Constitution and the Voting Rights Act, the Court nevertheless

utilized portions of the enacted map where it could do so, and placed the four new congressional districts consistent with population growth and in generally the same locations as the Legislature placed them. One of the new districts was drawn as a Latino opportunity district similar to the one created by the Legislature, and the other was drawn as a minority coalition district in Tarrant County based on the significant minority population growth occurring in the area.[32]

In other portions of the map, the Court sought to maintain the status quo and to avoid retrogression by maintaining the character of existing opportunity districts. Although the Court has not achieved absolute population equality, the population disparities are a result of both exigent circumstances (candidates will start filing for office on Monday, November 28, 2011) and a desire to avoid VTD and precinct cuts to facilitate the imminent election process with minimal delay and expense.[33]

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[32] Under the benchmark, there were 7 Latino opportunity districts, 3 African American opportunity/influence districts, and 1 crossover district (*i.e.*, 11 out of 32 districts). Although minority growth accounts for most of the growth in the State that has entitled Texas to four additional seats in the House of Representatives, the Court's map is conservative and draws only two additional minority districts out of the four. This reflects only a slight increase in the percentage of minority influence/opportunity districts – from 11/32 (34.4%) to 13/36 (36%).

[33] The Court's map splits only 3 VTD's. (Further, the Court's map splits 10 precincts, while C216 appears to have over 500 precinct splits). The Court notes that no Plaintiffs/voters have objected to the population disparities in the Court's map.

SIGNED on this 26th day of November, 2011.

_____/s/_____

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

_____/s/_____

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

JERRY E. SMITH, Circuit Judge, dissenting:

I joined in the order submitting proposed interim Congressional Plan C220 for comment by interested parties. It was worthy of submission for that purpose and reflected a good deal of concentrated effort by this panel and Texas Legislative Council to fashion a map that is appropriate for an interim plan under the specific situation faced here, where the preclearance court in the District of Columbia has not yet acted and where this court has not made final decisions on the remaining statutory and constitutional issues that have been raised regarding Texas's congressional redistricting. Plan C220 is an honest and diligent effort to achieve what an interim plan should do, and I have considered it carefully in light of the comments and responses that have been received from the various parties.

After reviewing the comments to C220 that point out its statutory, constitutional, and policy deficiencies, I respectfully dissent from the imposition of it as an interim plan for the 2012 Congressional elections in Texas. A better plan is C216, the one submitted by a bipartisan pair of Congressmen seeking the sort of compromise that

was unsuccessful in the 2011 Legislature. That plan has the support of at least eleven current Members of Congress from Texas. Although far from perfect, it goes a long way toward achieving a fair and legally defensible plan for the 2012 elections.

Irrespective of the advantages and disadvantages of C216 or any of the other myriad plans submitted by the various parties, C220 suffers from at least the following infirmities:

1. Although the Department of Justice objected to only two districts in the State's enacted plan (C185), C220 changes all thirty-six districts from their configuration in C185 (some of them in only a minor way, I acknowledge).

2. District 27 is changed dramatically so that Nueces County will be the 18 largest county in Texas that does not control its own congressional district. Harris County will greatly outweigh Nueces County and will control District 34. Plan C220 also splits the Port of Corpus Christi into two districts. Lastly, C220's configuration of Nueces County would require using a boat to travel from the southern part of the district to the northern part without entering an adjoining district.

3. Plan C220 creates District 33 as a new "coalition" district, yet as even some of the plaintiffs recognize, there is no evidence of voting cohesion, heightened or otherwise, among Latino, Black, and Asian minority groups so as to justify creation of a coalition district, even if such districts could be created by a court. Latinos and Blacks do not vote cohesively in the Democratic primaries in the area of proposed District 33.

4. The proposed District 23 in C220 does not meaningfully improve the performance for Latino candidates: The Latino candidate of choice will be elected in only two of ten elections. The only permissible justification for a radical redrawing of District 23 would be to improve electoral chances, even assuming that any measure other than Hispanic Citizen Voting Age Population ("HCVAP") is an appropriate test. That purpose fails in C220.

5. In District 23, Plan C220 decreases the HCVAP from 58.5% in the enacted plan to 57.3%. Yet the court redraws the district to ensure that it qualifies as a Latino opportunity district, relying on "performance" (i.e., probability of electing a Democrat) rather than HCVAP as the factor defining a Latino opportunity district. Ironically, the court increases the "performance" of this Latino district by making it less Latino—doubling the black population and trading Republican-leaning Anglos for Democratic-leaning Anglos. The contradiction that decreasing HCVAP makes a district more Latino demonstrates the error in using "performance" as the defining factor of a Latino opportunity district.

6. The proposed District 23 in C220 does not meaningfully improve the performance for Latino candidates: The Latino candidate of choice will be elected in only two of ten elections. The only permissible justification for a radical redrawing of District 23 would be to improve electoral chances, even assuming that any measure other than Hispanic Citizen Voting Age Population ("HCVAP") is an appropriate test. That purpose fails in C220.

7. Plan C220 protects District 25, without justification in voting rights law. It is a crossover district that a court promulgating an interim plan is not authorized to implement. Crossover districts are not protected under section 2, and the Department of Justice did not challenge District 25 under section 5. It is therefore questionable as to what authority this court would have at either the remedial stage or the interim stage to redraw this crossover district.

8. There are serious dislocations in the Dallas-Fort Worth area wrought by C220. The City of Arlington is split three ways (whereas it was unified in the enacted plan), effectively destroying its political voice in any district. District 6, which was never targeted for attack under the Voting Rights Act, has been changed to become a Dallas-based district, contrary to history and to any unavoidable shifts in population over the past decade.

9. Plan C220 unnecessarily splits the City of El Paso between Congressional districts.

10. In District 23, Plan C220 moves the lines by swapping Republican-leaning Anglo voters in northwest Bexar County for Democrat-leaning Anglo voters in west-central San Antonio. The Legislature is entitled to engage in partisan gerrymandering not inspired by ethnic motive. This court-ordered change is impermissible in an interim plan.

11. LULAC charges, in its response, that "C220 dilutes the Latino voting strength in Texas by not increasing the number of Congressional districts in which Latinos have an opportunity to elect candidates of their choice."

In sum, C220, though a forthright attempt to fashion an interim plan that meets the requirements of the Voting Rights Act while not intruding unnecessarily on legislative prerogative, fails that test. I respectfully dissent from the imposition of C220 as the plan to be used for the 2012 Congressional elections in Texas.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-360

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/25/11
Document 543

ORDER

Defendants' motion to stay implementation of the court-drawn interim house redistricting plan pending appeal (Dkt. No. 529) is DENIED for the reasons given in this Court's Order dated November 23, 2011. As stated in that Order, when there is no other legally enforceable plan in effect, this Court is required to craft an independent court-drawn interim map. The State has misinterpreted the applicable case since the inception of the interim court plan process. The State insists that the Court must simply adopt its enacted unprecleared plan, making only minimal changes, if any, to "remedy" any constitutional or statutory violations. The State continues to rely on *Upham v. Seamon*, 456 U.S. 37, 102 S.Ct. 1518 (1982), which is clearly inapposite to the situation that the Court faces herein. In *Upham*, the district court was faced with drawing a remedial

plan after preclearance of the State's enacted plan had been denied. In the remedial phase, under *Upham*, the district court's task would be limited to remedying the portions of the map known to be retrogressive or otherwise violating the Voting Rights Act or the U.S. Constitution. Had the State chosen the path of administrative preclearance through the Department of Justice, we would perhaps be in the remedial phase right now. However, the State chose to file a lawsuit in the United States District Court in the District of Columbia, which is still pending, and we are not in the remedial phase. Instead, we are in an interim phase where the Court has been placed in the position of crafting an independent court drawn plan that complies with the U.S. Constitution and Sections 2 and 5 of the Voting Rights Act. In doing so, the Court is precluded from simply adopting the State's enacted plan or deferring to the challenged plan, as doing so would make the preclearance process meaningless and constitute a de facto ruling on the merits of the various legal challenges to the State's plan. *See Lopez v. Monterey County*, 519 U.S. 9, 117 S.Ct. 340 (1996)(district court erred when it failed to independently craft an electoral plan and instead adopted the County's proposal, which required preclearance); *see also McDaniel v. Sanchez*, 452 U.S. 130, 101 S.Ct. 2224 (1981)(district court erred in adopting the County's plan, which required preclearance). It is undisputed that the "failure to obtain either judicial or administrative preclearance renders the [voting] change unenforceable," *Clark v. Roemer*, 500 U.S. 653, 111 S.Ct. 2096, 2101 (1991), and the Court cannot simply

adopt an unprecleared redistricting plan, in whole or in part, with the signatures of a few judges sitting in Texas.

Further, the Court's order is not akin to a preliminary injunction as the State suggests. The only request for injunctive relief that has been raised in this lawsuit is the plaintiffs' request that the State's enacted plan be enjoined from implementation because it has not been precleared. *See Clark*, 111 S.Ct. at 2101 (if there has been no preclearance, plaintiffs are entitled to an injunction prohibiting the State from implementing the changes). However, since the inception of this lawsuit, the State has admitted that its enacted plan must be precleared prior to implementation. Yet it has persisted in trying to avoid preclearance altogether by demanding that its unprecleared plan be adopted by the Court as an interim court drawn plan. Again, the dictates of the U.S. Supreme Court preclude this Court from doing so.

The dissent has somewhat embraced the State's arguments, and also relies on *Upham*, even though this Court has not arrived at the remedial stage of these proceedings. Likewise, the dissent tries to distinguish *Lopez* based on the procedural posture of the preclearance proceedings in this matter. However, there was no preclearance in *Lopez* and there is no preclearance in this case. At the end of the day, no preclearance means no preclearance, and no enforceable plan. The dissent also fails to appreciate that the Court has drawn an independent redistricting plan without ruling on any of the various legal challenges, and it has considered the parties' legal challenges only for the purpose of

avoiding the same legal challenges to the court drawn map. *See Conner v. Waller*, 421 U.S. 657, 95 S.Ct. 2003 (1975)(the district court cannot decide the constitutional challenges to the challenged, unprecleared plan). The Court's House plan clearly rises above the myriad of challenges to the State's enacted plan and allows a free and fair election in 2012.

In conclusion, the State claims that it will be irreparably injured if a stay is not granted. However, the individuals who would suffer irreparable injury if the stay were granted are the citizens of Texas, by being deprived of the opportunity to vote in the upcoming election under the schedule currently in place.

SIGNED this 25th day of November, 2011.

/s/

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

/s/

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

JERRY E. SMITH, Circuit Judge, dissenting:

Because a stay of the orders implementing interim plans for the 2012 elections is needed to allow orderly review and clarification of critical legal issues, and because a stay will not harm any party, I respectfully dissent from the denial of a stay. In its order announcing an interim redistricting plan for the Texas House of Representatives, the majority acknowledged that "these are difficult issues and

reasonable minds can disagree." It is therefore puzzling that the majority is unwilling to stay its order so that those difficult issues can be addressed on appeal before the announced interim plans are implemented.

There are myriad issues to be decided regarding interim, court-ordered redistricting plans. Because these matters are usually raised only in the wake of the decennial census, the caselaw is somewhat sparse and often murky. Questions that are not addressed now, before any part of these interim plans are implemented, might not be answered for yet another ten years or more. That is why the more orderly course is for this court to stay its proceedings, before filing for office begins in Texas on November 28, so that the Supreme Court will have sufficient time to address the complex legal issues that apply to interim plans.

Here are the issues most begging for resolution or explication:

1. In fashioning a temporary interim redistricting plan, how much deference should a court give to state-enacted legislative plans where a determination for preclearance has been submitted but is pending in: (1) districts that have not been specifically challenged; (2) districts that have been challenged under novel legal theories; (3) districts that have been challenged but as to which the challenges are unlikely to succeed on the merits; and (4) districts that have been challenged where the claims have a likelihood of success on the merits? In *Upham v. Seamon*, 456 U.S. 37 (1982), the Court directed lower courts to modify a state's legislative

plans only where absolutely required by law in a situation in which a determination on preclearance had been made and two of the districts in the State's plan had failed preclearance. *See also White v. Weiser*, 412 U.S. 783, 794-95 (1973). In contrast, the Court in *Lopez v. Monterey County*, 519 U.S. 9 (1996), rejected a lower court's wholesale implementation of a county's plan as an interim plan where the county had failed even to submit the plan for preclearance, defying a court order and despite being on notice for five years.

The instant case falls somewhere in between the situations in *Seamon* and *Lopez*: The State of Texas here has not attempted to frustrate or obviate the preclearance process but instead has timely submitted its maps to the D.C. District Court (unlike the county in *Lopez*), but the D.C. court has not yet ruled on preclearance (unlike the Department of Justice in *Seamon*, which had ruled on preclearance). Although the majority, as to the Texas House of Representatives, contends that the many challenges to the State's plan makes it "impossible to give substantial deference to the State's plan," the very existence of my proffered alternative plan, H299, shows that it is possible to give more deference than the majority did while still taking the plaintiffs' challenges seriously. It would be of greater assistance for the Supreme Court to provide guidance on this issue.

2. In a court-ordered interim plan, how much population deviation is permissible in districts unchallenged by the plaintiffs or districts without meaningful one-person one-vote issues? The majority, relying on *Connor v. Finch*, 431 U.S. 407,

414 (1977), modified the State's enacted districts to bring them into *de minimis* deviation, even in districts unchallenged by the plaintiffs.

In contrast, my map left the unchallenged districts, which had population deviations within the legally permissible range for legislatures (but were not *de minimis*), intact, in accordance with the guidance given in *Seamon*, which held that the stricter *Connor* standard cannot be the sole basis for modifying a state's redistricting, but instead is applicable only where a specific violation was found and a remedial district was being drawn. *Seamon*, 465 U.S. at 43.

3. For purposes of section 2 and section 5 of the Voting Rights Act, is election "performance" relevant or, or instead is the relevant measure the percentage of citizen voting age population? The majority redrew Districts 77 (in El Paso County) and 117 (in Bexar County) because, under, the State's plan, the district does not "perform" often enough (*i.e.*, it was likely to elect a Republican) despite Hispanics' comprising an overwhelming majority of the citizen voting age population in those districts (73% and 63%, respectively). In contrast, I read the section 2 caselaw to say that performance is not a relevant measure, *Johnson v. De Grandy*, 512 U.S. 997, 1014 n.11 (1994), but rather the relevant measure is the majority-minority requirement, *Barlett v. Strickland*, 556 U.S. 1, __, 129 S. Ct. 1231, 1244-45 (2009).

I have not found, nor has the majority cited, any caselaw to the contrary. That said, there is little to no guidance about whether a court should consider

performance in a section 5 retrogression or discriminatory intent analysis, so it would be helpful for the Supreme Court to provide clarity on this question.

4. May a court order the creation of minority "coalition" districts in an interim plan, and, if so, under what circumstances? Though the Court in *Bartlett* rejected the contention that "cross-over" districts are covered by section 2, some of its language calls into question whether "coalition" districts are similarly covered (although the Court did expressly reserve the question). The majority created such coalition districts in Dallas County (HD 107), Fort Bend County (HD 26), and Bell County (HD 54). Districts 26 and 54 relied on Asian votes to form a "coalition," despite the lack of evidence showing cohesion between Asians and Blacks or Hispanics in voting.

Though the majority contends these new coalition districts arose "naturally" from a restoration to the *status quo*, it is hard to see how that could be the case: For example, HD 107 was substantially reconfigured from the *status quo* (composed of less than 40% of HD 107 in the benchmark plan) to exclude Anglo voters and include minority voters, reducing the Anglo citizen proportion by 33%. Similarly, Districts 26 and 54 were altered from the *status quo* by removing almost exclusively white populations instead of reducing the population in a race-neutral manner. Although my proposed alternate plan creates a new coalition district in Tarrant County, it is the identical new district created by the State (and dismantled by the majority), and the State has unquestionable latitude

to create such districts so long as it does not subordinate traditional redistricting principles to race.

The lack of clarity regarding coalition districts is evidenced by a circuit split on whether they may ever be required. The Fifth Circuit has treated the question as one of fact, holding that it is not clearly erroneous for a district court to find the first Gingles requirement satisfied by aggregating minority groups to reach the 50% threshold. *See Campos v. City of Baytown, Tex.*, 840 F.2d 1240 (5th Cir. 1988). The Sixth Circuit, however, has held that the text of the VRA does not allow its application to coalitions of minority groups. *See Nixon v. Kent Cnty.*, 76 F.3d 1381 (6th Cir. 1996). This issue cries out for clarification. In its motion for stay, the State concedes that it may become necessary to delay the primary elections pending appellate review of issues regarding the interim plans. Indeed, Texas has some of the earliest primaries—perhaps the very earliest—in the United States. A delay of even a few weeks would still provide ample time for orderly primaries and runoffs well in advance of the November elections. But long before any such adjustment might become necessary, the first step should be for entry of a stay of this court's orders imposing interim redistricting plans for the Texas House of Representatives and the Texas Senate and, once this court imposes an interim Congressional plan, a stay of that order as well. Likewise, a temporary stay should be entered of candidate filing and qualifications deadlines for all elective offices so that filing does not begin on November 28.

The majority's refusal to enter a stay under these compelling circumstances is error. I therefore respectfully dissent.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-360

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/23/11
Document 528

ORDER

The court, by majority, adopts PLAN H302 as the interim plan for the districts used to elect members in 2012 to the Texas House of Representatives. A map showing the redrawn districts in PLAN H302 is attached to this Order as Exhibit A. The textual description in terms of census geography for PLAN H302 is attached as Exhibit B. The statistical data for PLAN H302 is attached as Exhibit C. This plan may also be viewed on the DistrictViewer website operated by the Texas Legislative Council (http://gis1.tlc.state.tx.us/) under the category "Court-ordered interim plans." Additional data on the interim plan can be found at the following website location maintained by the TLC under the "Announcements" banner: http://www.tlc.state.tx.us/redist/redist.htm.

This interim map is not a ruling on the merits of any claims asserted by the Plaintiffs in this case, any of the other cases consolidated with this case, or the case pending in the United States District Court for the District of Columbia ("D.C. Court").

The decennial census was conducted last year, pursuant to Article I, § 2 of the United States Constitution. After the census figures were released, it became clear that the current apportionment plan for the Texas House of Representatives violates the one person, one vote principle under the United States Constitution as a result of the dramatic population growth in the last decade. Thus, the State of Texas undertook redistricting efforts to apportion seats in the Texas House of Representatives. See U.S. CONST. ART. I, § 2; see also TEX. CONST. ART. III, § 26.

The 82nd Texas Legislature enacted House Bill 150 ("H.B. 150"), which established a new redistricting plan for the Texas House of Representatives. ("Plan H283"). House Bill 150 was signed in the Texas House and Texas Senate on May 2, 2011 and signed into law on June 17, 2011. A lawsuit for preclearance of the State's enacted plan was filed on July 19, 2011 and is currently pending in the United States District Court for the District of Columbia. In that case, the United States has stated that it believes the State's enacted House plan was "adopted with a discriminatory purpose" and "has a retrogressive effect" on the voting strength of minority voters. The D.C. Court, hearing this argument, concluded that "the State of Texas used an improper standard or methodology to determine" if its maps would adversely affect minority voters.

The D.C. Court therefore denied the State's request for summary judgment, electing to conduct a trial to determine factual issues related to the alleged discrimination by the Texas Legislature.

The D.C. Court's refusal to approve the State's map places this Court in the unwelcome position of having to "designate a substitute interim plan for the 2012 election cycle by the end of November."[1] Because the current plan is malapportioned and the State's enacted plan has not been precleared, the Court prepared a court drawn plan so that the 2012 elections could proceed in a timely manner.[2] With the invaluable technical assistance of the staff at Texas Legislative Council, the Court was able to draw a redistricting plan that met with the approval of a majority of the Court.

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[1] As this Court noted in its order denying summary judgment, because the State's enacted House plan has not been precleared, it is unenforceable and cannot be implemented. *Clark v. Roemer*, 500 U.S. 653, 646 (1991) (failure to obtain either judicial or administrative preclearance renders the voting change unenforceable). Plaintiffs in this Court also have challenged the legality of the State's enacted House plan and sought to enjoin the State from implementing the plan.

[2] When an enacted plan is not in place in time for the upcoming election, the Court must step in and craft an independently drawn court plan for the upcoming election. *See Branch v. Smith*, 538 U.S. 254, 266 (2003) (upholding injunction of state court plan because "it had not been precleared and had no prospect of being precleared in time for the 2002 election"); *Lopez v. Monterey County*, 519 U.S. 9, 24 (1996) (where Section 5 preclearance requirements have not been satisfied the remedial court must determine "what remedy, if any, is appropriate.").

Despite the allegations of intentional discrimination and widespread constitutional violations in the enacted House plan, the State objects to issuance of a court-drawn map and insists that this Court must adopt the enacted plan "[b]ecause unelected federal judges possess neither the constitutional power nor the political competence to make the policy choices essential to redistricting[.]" While redistricting is generally a task for legislatures, a legislature's powers are not unbounded. Here, Texas failed to receive the necessary Voting Rights Act approval for the House plan before the 2012 elections. In such cases, federal courts are required to step in to create a lawful map that will allow free and fair elections to go forward.[3]

In crafting an interim map, this Court may not simply fix the problematic parts of the enacted map as the State suggests.[4] Doing so would interfere with the lawsuit currently pending in the D.C. Court, a lawsuit initiated by the State of Texas. Rather, this Court is tasked with drafting an independent map that will enable elections for the 2012 election cycle. Once the D.C. Court rules, and if the State receives preclearance for its enacted plan, this Court would then remedy any constitutional defects while deferring to State policy for the rest of the map.[5] If

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[3] *See Lopez*, 519 U.S. at 24.

[4] Despite the State's argument that this Court should adopt the State's enacted plan wholesale, the State recently requested a trial in the D.C. Court to occur in early December, thereby implicitly acknowledging that this Court is not free to remedy defects in the enacted plans until there is a ruling from the D.C. Court.

[5] *See Upham v. Seamon*, 456 U.S. 37 (1982).

the D.C. Court denies preclearance, the enacted plan will be null and the Legislature will be required to enact a new plan. But until that time comes, this Court's hands are tied and it must draft an interim map.

The Court's primary goal in crafting its map was to preserve the status quo as much as possible. All proposed maps, including the State's enacted map, were considered.[6] But ultimately, the Court was obliged to adopt a plan that complies with the United States Constitution and also embraces neutral principles that advance the interest of the collective public good, as opposed to the interests of any political party or particular group of people. The Court therefore declined to adopt any of the Plaintiffs' proposed plans, and has instead crafted a plan that embraces the neutral districting principles required of court-drawn plans.

In determining the standards, principles, and criteria to follow in drawing this plan, the Court carefully considered the parties' briefs, the relevant case law, and the approach taken by other district courts.[7] The legal standards and neutral

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[6] *Smith v. Cobb County*, 314 F. Supp. 2d 1274 (N.D. Ga. 2002) ("That a court must not act as a rubber stamp does not mean, however, that the court cannot consider the proposed legislative plan, just as it considers any other plans submitted to it.")

[7] When it became clear that the Court would need to craft a court-drawn plan, it sought the parties' comments on the standards that would govern its task. The State appears to completely ignore the legal standards applicable to an independent court-drawn plan. Instead, the State insists that the Court take the State's enacted plan, make only minimal

redistricting criteria employed by the Court in drawing the House map are based on clearly established principles and ensure the fairness and impartiality expected in any judicially crafted redistricting plan. Those neutral principles—including primarily compactness, contiguity, and respect for county and municipal boundaries—place the interests of the citizens of Texas first.

In drawing the map, the Court began by considering the uncontested districts from the enacted plan that embraced neutral districting principles. Although the Court was not required to give any deference to the Legislature's enacted plan, the Court attempted to embrace as many of the uncontested districts as possible. After inserting those districts into the map, the Court adjusted them to achieve *de minimis* population deviations.[8]

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changes, if any, to "cure" any "defects" in the plan, leave the rest untouched, and implement the plan as a court-drawn plan. This approach would be a clear contravention of Section 5 preclearance requirements and would require the Court to rule on the merits of the State's enacted plan, which it is not permitted to do at this juncture. *See McDaniel v. Sanchez*, 452 U.S. 130, 153 (1981) ("But where a court adopts a proposal 'reflecting the policy choices . . . of the people [in a covered jurisdiction]' . . . the preclearance requirement of the Voting Rights Act is applicable.").

[8] When a court is called upon to draw districts, it has less latitude than a legislative body might have when it comes to equality in population. "Court-ordered districts are held to higher standards of population equality than legislative ones. A court-ordered plan should 'ordinarily achieve the goal of population equality with little more than *de minimis* variation.'" *Abrams v. Johnson*, 521 U.S. 74, 98 (1997); *Chapman v. Meier*, 420 U.S. 1, 26-27 (1975); *Connor v. Finch*, 431 U.S. 407, 414 (1977).

When asked for comments on the proposed map, the Plaintiffs did not object to the Court's use of the enacted map for those districts.

In his dissent, Judge Smith[9] argues that the Court should have given more deference to the State's enacted plan in crafting an independent court-drawn plan. However, the Court embraced as many of the uncontested districts as possible. The myriad of significant legal challenges to the State's enacted plan under the Voting Rights Act and the United States Constitution made it impossible to give substantial deference to the State's plan as the dissent has suggested.[10] Those challenges include: Districts 26, 27, 31, 32, 33, 35, 36, 39, 40, 41, 54, 78, 90, 93, 95, 102, 103, 104, 105, 107, 112, 113, 114, 117, 137, 139, 144, 145, 146, 147, and 149. With the border-to-border challenges to the State's enacted map, the Court was forced to undertake the delicate task of creating an independent map, giving as much consideration to the State's enacted map as possible without compromising the legal standards and neutral redistricting criteria that it set out to follow.

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[9] The two undersigned judges likewise respect Judge Smith's work ethic and professionalism, and thank him for his service. Nothing in this opinion is intended to personally or professionally impugn his judgment in this case. As Judge Smith notes in his dissenting opinion, these are difficult issues and reasonable minds can disagree.

[10] *See Abrams v. Johnson*, 521 U.S. 74, 86 (1997) (stating that *Upham* deference is not appropriate where "the constitutional violation [] affects a large geographic area of the State" because 'any remedy of necessity must affect almost every district.'").

Thus, after incorporating as many of the uncontested districts as possible into the interim map, the Court turned to the districts that are challenged as unconstitutional and attempted to return them to their original configuration in the benchmark. The dissent states that in doing so the Court has made "radical alterations in the Texas political landscape." The reality is that demographics, not this Court's actions, have changed the landscape. Since the 2000 census, the population of Texas has grown by 4,293,741.[11] The vast majority of that growth is attributable to growth in the Latino and African American communities. Specifically, the Hispanic population in Texas grew by 2,791,255 and the Black population grew by 522,570, while the Anglo population increased by less than 465,000 people.[12]

Despite the population growth stated above, the challenged enacted plan reduced minority opportunity districts from 50 to 45. The Court's interim map merely restores the minority opportunity districts to their original configuration in the benchmark. The result of this restoration is a map that includes the original 50 minority districts, while "creating" three additional performing minority districts that emerged naturally once neutral districting principles were used. Indeed, the dissent's own map creates two additional minority districts–one in Tarrant County and one in Hidalgo County. The majority interim map also creates the

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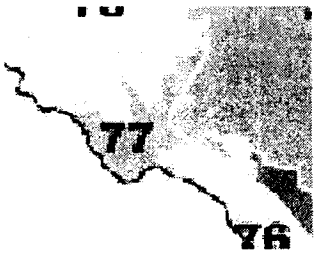
[11] http://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf.

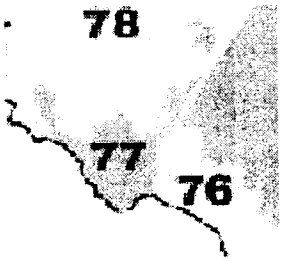
[12] Texas State Data Center: http://txsdc.utsa.edu/Data/Decennial/2010/Redistricting/Profiles.aspx

district in Hidalgo County, but excludes the one in Tarrant County and instead adds the second one in Harris County and a third in El Paso. The district in Harris County sprang naturally from the population growth in the region. Similarly, the El Paso district had been gerrymandered in the enacted plan so that it ended up configured into the shape of a deer with antlers.

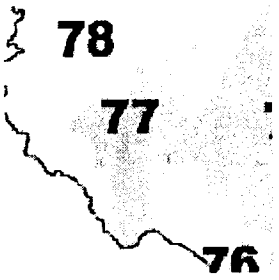
Benchmark (Plan H100)



Enacted (Plan H283)



Interim Plan (H302)



While the dissent includes this deer-shaped district despite allegations that it was unconstitutional, the interim map merely restores the district to its original configuration while making adjustments for population growth. The ultimate inclusion of one additional minority district compared to the dissent hardly seems like "radical alterations in the Texas political landscape." Indeed, it is the dissent's Tarrant County district that is the result of an intentional effort to create a minority district, unlike the Court's attempt to merely maintain the status quo.

Likewise, although acknowledging that neither this Court nor the D.C. Court has made any rulings regarding the merits of the cases, and that this Court is precluded from making such rulings until the D.C. Court rules on the Section 5 claims,[13] the dissent proceeds to conclude that the plaintiffs have failed to demonstrate a substantial likelihood of success on the merits and that accordingly the Legislature's judgments should be respected.

The dissent argues that "the majority seems to take the plaintiffs' complaints as true for purposes of interim relief on every colorable claim." The dissent apparently ignores the fact that it interprets many of the Plaintiffs' and Department of Justice's objections as baseless. The dissent does so while simultaneously acknowledging that "the Legislature created substantial population disparities in Dallas and Harris Counties in a manner that may raise concerns of racial or partisan gerrymandering in

[13] *See Lopez*, 519 U.S. at 24.

violation of *Larios v. Cox*." Remarkably, after that concession, the dissent states: "Nothing in the State's enacted plan will hinder, in the slightest, Hispanic opportunity to register and vote in greater numbers than before." The dissent further discounts that the D.C. Court concluded that the State "used an improper standard or methodology to determine" if its map would adversely affect minority voters.

An excellent example of the dissent's interference with the D.C. Court's preclearance proceedings is seen in House District 117, which is located in the southwest corner of Bexar County. In the D.C. Court, the Department of Justice has alleged that HD117 was intentionally reconfigured by the State in an effort to trade out mobilized Hispanic voters who regularly vote for Hispanic voters who do not regularly vote. The dissent simply tosses this issue aside as being "without foundation," and adopts HD117 into the dissenting map. However by doing so, the dissent has done "[w]hat is foreclosed" to this Court because "Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General the determination whether a covered change does or does not have the purpose or effect 'of denying or abridging the right to vote on account of race or color.'"[14]

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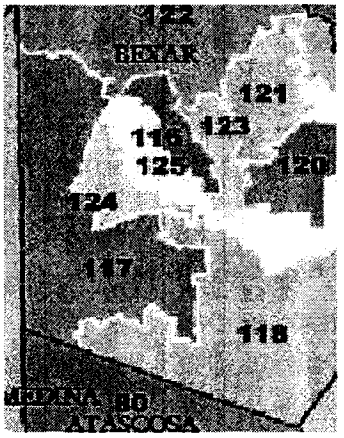
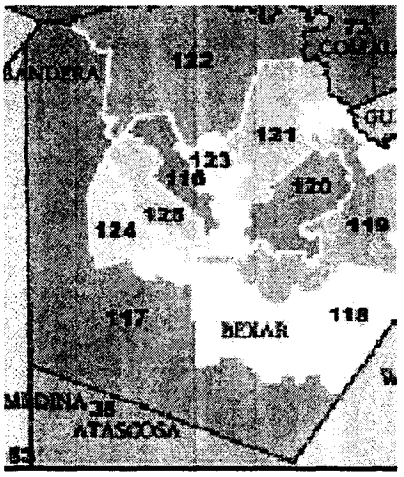
[14] *U.S. v. Board of Sup'rs of Warren County, 14 Miss.*, 429 U.S. 642, 645 (1977); *see also Smith v. Clark*, 189 F. Supp. 2d 529, 534 (S.D. Miss. 2002) ("A three-judge court does not have jurisdiction to determine whether a covered change does or does not have the purpose or effect 'of denying or abridging the right to vote on account of race or color.'").

The Court's map in contrast merely returns HD117 to its original configuration in the benchmark in order to maintain the status quo until the D.C. Court rules. When viewed in the images below, this hardly seems like the "radical alterations in the Texas political landscape" alleged by the dissent:

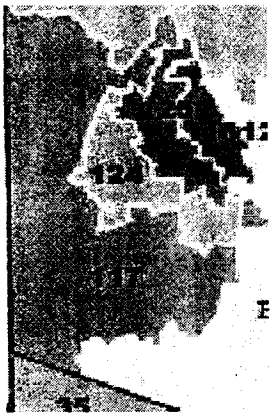
Benchmark (Plan H100)



Enacted (Plan H283)



Interim Plan (H302)

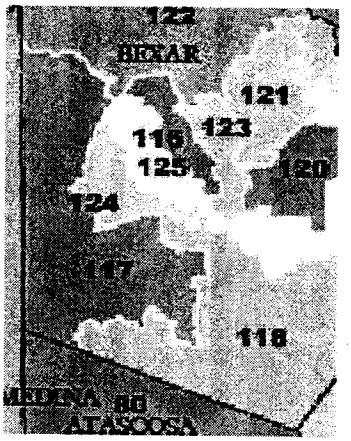


The dissent also wrongly alleges that the interim map "creates" coalition districts that are not required by the Voting Rights Act. Once again, the dissent misstates the Court's approach to drawing the interim map. This Court has not made any merits determinations as to whether coalition districts are required under the Voting Rights Act. Rather, like the minority opportunity districts discussed above, when these districts were restored to their baseline configuration and population shifts were taken into account, these districts resulted quite naturally.

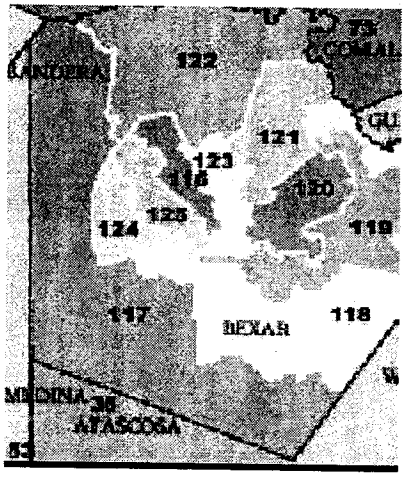
For example, House District 26, situated in Fort Bend County to the southwest of Houston, increased from 44 percent minority population to 60.6 percent minority in 2010. The image below shows that the enacted plan substantially reconfigured HD26 in a way that made it irregularly shaped. Evidence presented at trial indicates that this reconfiguration may have been an attempt by the State to intentionally dismantle an emerging minority district. As the images below demonstrate, the

interim plan attempts to take this district back to its original configuration in the benchmark while making slight adjustments for population changes.

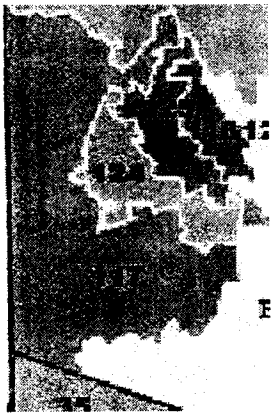
Benchmark (Plan H100)



Enacted (Plan H283)



Interim Plan (H302)



The dissent's incorporation of the State's bizarrely shaped House District 26, despite alleged constitutional violations, constitutes an improper merits determination regarding the validity of that claim. In contrast, the Court's decision to return the challenged district to its original configuration is simply a method of preserving the status quo until the D.C. Court has made a preclearance determination.

The State's objections to the Court's interim map suffer from even greater flaws. During the course of these proceedings the State has acknowledged that it separated a number of Latino and African American communities from their benchmark districts. It was also apparent from these proceedings that the Legislature started from the presumption that it could have population deviations as high as ten percent, and from that presumption it began to gerrymander districts to meet its goal of creating or maintaining as many Republican districts as possible. The State insists that it did not engage in racial gerrymandering, but rather only

engaged in these actions to make various districts more Republican. Accordingly, the State argues that any discrimination by the Legislature was directed against Democrats, not minorities. The State argued to the D.C. Court that it was entitled to summary judgment in that case, but the D.C. Court found that a fact issue existed as to whether the State engaged in racial discrimination. Having failed to secure preclearance from the D.C. Court, the State fails to comprehend that this Court undertakes an interim map process, not a remedial map process. It is clear the State fails to understand the difference when it has statements such as "the Court has not identified any particular Voting Rights Act (VRA) or constitutional violation that would provide a compelling or narrowly tailored explanation for the proposed revisions." This Court is precluded from making any rulings on the merits at this juncture. When it became apparent that the Court would be required to draw an interim map, the Court provided all parties (including the State) an opportunity to submit a proposed map. The State refused to do so, arguing that the Court was required to adopt its non-precleared map in its entirety. For the reasons stated above, the Court cannot adopt the State's unprecleared map. After arguing throughout these proceedings that its entire map was legal, the State then proceeds to attack the Court for failing to merely correct any "perceived legal defects in the recently-adopted redistricting plan," without detailing what "limited" legal defects should have been corrected.

In sum, the Court's map simply maintains the status quo as to the challenged districts pending

resolution of the preclearance litigation, while giving effect to as much of the policy judgments in the Legislature's enacted map as possible. Not everyone will get what they want from the Court's interim map. But, the Court concludes by stating expressly what is implicit in the Court's explanation of how it drafted the interim map: the plan was developed without regard to political considerations or the interests of particular groups of people.

The Legislature's enacted plan is by the State's own admission a radical partisan gerrymander. By asking the Court to adopt it, the State is asking the Court to conspire with the Legislature to enact a partisan agenda. This a court cannot do. As Judge Higgenbotham noted in *Balderas*:

> political gerrymandering, a purely partisan exercise, is inappropriate for a federal court drawing a [] redistricting map. Even at the hands of a legislative body, political gerrymandering is much a bloodfeud, in which revenge is exacted by the majority against its rival. We have left it to the political arena, as we must and wisely should. We do so because our role is limited and not because we see gerrymandering as other than what it is: an abuse of power that, at its core, evinces a fundamental distrust of voters, serving the self-interest of the political parties at the expense of the public good.[15]

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[15] *Balderas v. State of Texas*, No. 6:01cv158, 2001 U.S. Dist. LEXIS 25740, at *19-20 (E.D. Tex. Nov. 14, 2001) (*per curiam*), *summarily aff'd*, 536 U.S. 919 (2002).

A more comprehensive opinion addressing additional legal issues will follow.

SIGNED this 23rd day of November, 2011.

/s/
ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

/s/
XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

JERRY E. SMITH, Circuit Judge, dissenting:

When a three-judge court is forced into the unwanted position of fashioning interim redistricting plans, the focus should be on practicality, balance, and moderation, albeit with unbending adherence to the Voting Rights Act ("VRA") and the Constitution. The judges in the majority, with the purest of intentions, have instead produced a runaway plan that imposes an extreme redistricting scheme for the Texas House of Representatives, untethered to the applicable caselaw. The practical effect is to award judgment on the pleadings in favor of one side—a slam-dunk victory for the plaintiffs[1]—at the expense

[1] The majority's plan creates more minority or coalition districts than the Latino Taskforce plan (H292), as many as the NAACP plan (H202), and only slightly fewer than the MALC (H295) and Perez Plaintiffs (H297) plans. After the court published the draft plan on November 17, directing the parties to respond, the comments were predictable. The plaintiffs know a win when they see it: The Perez plaintiffs and Mexican American Legislative Caucus, for example, advised that "the majority's H298 should be adopted as the Court's interim court ordered plan for the 2012 Texas election cycle." It opined that

of the redistricting plan enacted by the Legislature, before key decisions have been made on binding questions of law. Because this is grave error at the preliminary, interim stage of the redistricting process, I respectfully dissent.[2]

Unless the Supreme Court enters the fray at once to force a stay or a revision, this litigation is, for most practical purposes, at an end. This three-judge court is at the point of having to draw interim maps now because the Texas Election Code sets extremely early deadlines to file for office; this panel has extended the dates so that filing for office begins November 28 and ends December 15, subject to further extension by this court or the Supreme Court. The sweeping decision by this panel majority affects most of the State map and will result in the election of new incumbents in 2012. The plaintiffs then predictably will claim that the interim map ratchets in their favor by constituting a new

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"the plan offered by the Court majority [ ] offers the best overall approach to meeting the Court's obligations for Court ordered interim plans."

[2] Nothing I say here is intended as personal or professional criticism of my two panel colleagues, who serve this court and this country with integrity, dedication, and skill. These are difficult and complex issues, and the caselaw is not always as helpful as we might hope, so substantial disagreement as to the result should not be surprising.

I compliment, as well, all of the attorneys from both sides. They have shown an exemplary level of cooperation, candor, flexibility, and hard work in presenting, orally and in writing, the legal and factual issues that this court must consider. They have made the court's work easier with the quality of their submissions.

benchmark for preclearance by the D.C. Court, remedial action by this court, or future action by the Legislature.[3] This reality warrants caution in drawing an interim map and especially in creating new minority opportunity districts at this early stage.

There has been no determination by the three-judge court in the District of Columbia (the "D.C. Court") that is considering the issues arising under section 5 of the VRA. Nor has this court formally taken under submission any issues with the enacted plan regarding the Constitution or section 2 of the VRA. Depending on what the D.C. Court decides, this court will need to conduct extensive evidentiary hearings on the remedial stage of this litigation. Only then will it be appropriate for us to determine, as a final matter, whether the enacted redistricting plans violate the VRA or the Constitution.

Whenever a district court engages in the unwelcome obligation of drawing a reapportionment plan, the starting point is always the recognition that "reapportionment is primarily a matter for legislative consideration and determination." *White v. Weiser*, 412 U.S. 783, 794 (1973) (citations omitted). Accordingly, district courts are bound to "follow the policies and preferences of the State, as expressed in statutory and constitutional provisions *or in the reapportionment plans proposed by the state legislature*, whenever adherence to state policy does not detract from the requirements of the Federal

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[3] *See Mississippi v. United States*, 490 F. Supp. 569, 582 (D.D.C.1979), *aff'd*, 444 U.S. 1050 (1980). *But see White v. City of Belzoni*, 854 F.2d 75, 76 (5th Cir. 1988).

Constitution." *Id.* at 795 (emphasis added). The aim of giving such due regard to plans proposed by the State is so the court will "not pre-empt the legislative task nor intrude upon state policy any more than necessary." *Id.* (citation and internal quotation marks omitted).

The parties sharply disagree about how much deference should be given to the maps validly enacted by the Legislature and that are pending preclearance before the D.C. Court. At one end, the State argues that, under *Upham v. Seamon*, 456 U.S. 37 (1982), this court is bound to defer to the enacted plan except in geographical areas where the court makes a specific finding of statutory or constitutional violation. At the other extreme, the plaintiffs argue that, under *Lopez v. Monterey County*, 519 U.S. 9 (1996), we should give no deference whatsoever to the legislative plans, not even considering them in drawing an interim map, because there has been no final ruling on preclearance.

Because we are not in a circumstance squarely controlled by either *Seamon* or *Lopez*, this court should take a moderate route between the two extremes in crafting an interim map. Unlike the court in *Seamon*, we are not in a position to defer blindly to the State's map, because there has been no valid determination of which districts have been precleared. *See Seamon*, 456 U.S. at 38. And unlike the court in *Lopez*, we are not faced with a situation in which the State has deliberately obstructed and tried to circumvent the preclearance process. *See Lopez*, 519 U.S. at 24. Therefore, recognizing that under *Lopez* we should not act as a rubber stamp for

the State where its enacted plan has not been precleared, but also cognizant that, under *White* and *Seamon*, we must give due regard to the will of the Legislature unless the VRA or Constitution requires otherwise, the correct approach for an interim map involves respecting legislative choices while seriously evaluating the plaintiffs' alleged violations.

The exigent circumstances in formulating an interim plan preclude this court from plenary review of all the legal issues. In view of these considerations, a proper interim map should begin with drawing, as the State enacted them, the districts that have not been specifically challenged in this court or the D.C. Court.[4] That respects the myriad political choices reflected in the legislative plan instead of substituting the court's preferences for the Legislature's.[5]

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[4] Although it is true that plaintiffs have alleged that the entire map was drawn with a discriminatory purpose, no plaintiff can substantially show that the rural and suburban districts in north and east Texas themselves were drawn with a discriminatory intent or are evidence of discriminatory intent.

[5] Creating an interim map is an art, not a science. It is a chore unfortunately required because of the impending deadlines of the Election Code and the necessity of drawing lines that can be used for the 2012 elections, which must proceed under some sort of plan. Because it is to be used only in the short term, before the pertinent legal and constitutional questions are formally decided, and because the court has only a brief time in which to fashion the complex plan, an interim plan must be somewhat indeterminate as compared to what a legislature, or on the other hand a court devising a final remedial plan, would issue.

In that sense, an interim map is like the sheet of plywood a merchant puts over his storefront the morning after a

The plaintiffs and, apparently, the majority rely on *Balderas v. Texas* to justify an approach that gives no consideration to the legislatively enacted plan.[6] First of all, the applicability of *Balderas* is questionable, because it involved a district court's drawing a new interim map from a *tabula rasa* on account of the legislature's *failing* to pass any reapportionment plan and further in light of the parties' having conceded that the existing scheme was unconstitutional. But even assuming its applicability, *Balderas* accorded substantially more deference to the State's legislative decisions, and assessed the plaintiffs' claims more critically, than does the majority here. For example, the *Balderas* court took the following approach to drawing an interim congressional map:

> Once the panel had left majority-minority districts in place and followed neutral principles traditionally used in Texas . . . *the drawing ceased*, leaving the map free of further change except to conform it to one-person, one-vote . . . . The results of this court's plan did ameliorate the gerrymander and placed the two districts gained by Texas in the census count; however, *doing more necessarily would have taken the court into*

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damaging storm: It is not especially pretty, but it keeps the rain out and allows the store to stay open for business until better repairs can be made. "*Le mieux est l'ennemi du bien*," "The perfect is the enemy of the good." Voltaire, *Dictionnaire Philosophique*.

[6] *See Balderas v. Texas*, No. 6:01-CV-158 (E.D. Tex., Nov. 14, 2001) (per curiam), *aff'd*, 536 U.S. 919 (2002).

> *each judge's own notion of fairness.* The practical effect of this effort was to leave the 1991 Democratic Party gerrymander largely in place as a "legal" plan.[7]

And when confronted with requests that more minority opportunity districts be drawn, *Balderas*, rather than taking the majority's approach of merely acquiescing to virtually all those requests, evaluated whether section 2 *required* those districts be drawn, employing the full totality-of-the-circumstances test. *Balderas*, No. 6:01-CV-158, at *10-*16. The *Balderas* court ultimately rejected those requests, reasoning,

> The matter of creating such a permissive district is one for the legislature. As we have explained, such an effort would require that we abandon our quest for neutrality in favor of a raw political choice. . . . Such arranging of voting presents a large and complex decision with profound social and political consequences. . . . We have no warrant to impose our vision of "proper" restraints upon the political process beyond the constraints imposed by the Constitution or the Voting Rights Act.

Id. at *13-*14 (citation omitted). *Balderas* quoted the Supreme Court's explanation of the three-judge district court's role: "[T]he federal courts may not

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[7] *Henderson v. Perry*, 399 F. Supp. 2d 756, 768 (E.D. Tex. 2005) (emphasis added). Because the *Henderson* court consisted of two of the same judges as did the *Balderas* court, *Henderson* provides us "the benefit of their candid comments concerning the redistricting approach taken in the *Balderas* litigation." *LULAC v. Perry*, 548 U.S. 399, 412 (2006).

order the creation of majority-minority districts unless necessary to remedy a violation of federal law." *Id.* at *14 (quoting *Voinovich v. Quilter*, 507 U.S. 146, 156 (1993)).

This court's next step, then, should be to consider seriously the plaintiffs' claims and the status of the action pending in the D.C. Court and, taking a cautious and restrained approach, to modify the State's districts where plaintiffs have shown a substantial likelihood of success on the merits, rather than ratifying the plaintiffs' requests merely because they have alleged violations. In challenged districts where the plaintiffs' case is relatively weak, the Legislature's judgments should again be respected.

Under these standards, the interim phase is not the time for this court to impose the radical alterations in the Texas political landscape that the majority has now mandated. In almost every instance in which one or more plaintiffs ask for a substantial change that would upset a legislative choice, the majority has elected to order that revision, immediately, in the interim redistricting plans that are effective for the 2012 elections. The majority makes no apparent effort to decide which, if any, violations are most likely to be found on plenary consideration after full hearing and the benefit of a ruling from the D.C. Court. Instead, the majority enacts an ambitious and aggressive redistricting plan that mimics what the plaintiffs have requested in almost every significant respect.

There is a much more moderate and fair way to draw interim districts for the 2012 elections while

adhering to the VRA and the Constitution. In our role as a statutory three-judge court, we are empowered to make certain policy decisions, in the absence of an enforceable legislative plan, that resemble choices a legislature might make. But those rulings by an unelected court should be grounded in recognition of a reasonable chance of success on the merits by plaintiffs as to specific claims.

Instead, the majority seems to take the plaintiffs' complaints as true for purposes of interim relief on every colorable claim. At almost every turn, where a decision is to be made as to whether to disturb a settled district in favor of one asked for by plaintiffs, the majority chooses the latter. The result is a redistricting scheme that awards the plaintiffs for their assertive pleadings and grants no meaningful recognition to the legitimate, nondiscriminatory choices that are a part of any comprehensive redistricting process.

There is a balanced way to satisfy our obligation—given the current impasse—to produce interim plans with an order that is much more evenhanded than what the majority has announced. I have identified specific areas of the State as to which the plaintiffs have presented colorable claims of statutory or constitutional infirmity in the plans enacted by the Legislature. As to those, it can fairly be argued that plaintiffs can show a likelihood of success on the merits, although any final decision must await a full hearing after a decision by the D.C. Court. Also where needed, in the process of fashioning those changes, I have made adjustments to reduce population disparities among districts.

The map I offer, Plan H299[8], which I have prepared with the invaluable and untiring expert assistance of the Texas Legislative Council, addresses a limited number of concerns that are the only ones appropriate for tentative adjustment at this preliminary, interim stage, because they show a substantial chance of success. Given the considerable latitude afforded this court at the interim stage, I recognize the propriety of correcting those potential violations for the 2012 elections.

First, in an effort to reward and protect an Hispanic legislator in the Rio Grande Valley (Hidalgo County) who changed from Democrat to Republican after being re-elected in 2010, the Republican-dominated Legislature moved well over 90% of the constituents out of his district (District 41) and added, for him, a more reliable voter base, accomplished by an extreme gerrymander and palpable population disparities with neighboring districts. The result is ripe for a viable challenge as offending the one-person-one-vote principle of the Equal Protection Clause. The problem is easily corrected without upheaval of other parts of the State, and I have fixed that, by a change in a few adjoining districts, in the interest of fairness and to avoid any legal deficiencies.

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[8] A map showing the redrawn districts in PLAN H299 is attached as Exhibit D. The textual description in terms of census geography for PLAN H299 is attached as Exhibit E. The statistical data for PLAN H299 is attached as Exhibit F. This plan may also be viewed on the DistrictViewer website operated by the Texas Legislative Council (http://gis1.tlc.state.tx.us/) under the category "Exhibits for Perez, et. al."

Second, this panel is unanimous in leaving untouched the Legislature's decision to reduce the number of Harris County representatives from 25 to 24, adhering to Texas's well-respected and neutral County Line Rule and to the fact that plain arithmetic shows Harris County is entitled to only 24 districts. In deciding which district to eliminate from the county, the Legislature deleted a coalition district (District 149) whose incumbent is the only Asian member of the House, and it paired that Democrat incumbent with a Democrat in abutting District 137. That raises possible section 5 concerns and potentially reeks of racial gerrymandering. Because of the fortuitous retirement of a Republican incumbent in Harris County, the problem is handily repaired by restoring the district of the Asian member and disbursing into nearby districts the population of the district that now has no incumbent.

Third, the Legislature dismantled a minority opportunity district in Nueces County, raising possible concerns under section 5. The State has persuasive justifications: Nueces County grew more slowly than did the rest of the State as a whole and now has only enough population to support 2.02 districts. Instead of violating the Texas Constitution by cutting the county line twice, the State drew two districts wholly contained within Nueces County, requiring the elimination of one minority opportunity district. Still, in an abundance of caution because of a possible section 5 retrogression claim, I have restored the minority opportunity district in Nueces County, though that unfortunately requires splitting the county three ways.

Fourth, the Legislature created substantial population disparities in Dallas and Harris Counties in a manner that may raise concerns of racial or partisan gerrymandering in violation of *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga.), *aff'd*, 542 U.S. 947 (2004). The map I have proffered largely evens out the variations and reduces the number of precinct cuts.

In fairness, I should mention that the majority, also, addresses these four concerns in the adjustments it has made. Not content, however, with making these justified changes, the majority ventures into other areas of the State and, as though sitting as a mini-legislature, engrafts its policy preferences statewide despite the fact that no such extreme modifications are required by the caselaw or by the facts that are before this court at this early stage before preclearance and remedial hearings.

For example, the majority changes the districts in Bexar County, where the Hispanic Citizen Voting Age Population ("HCVAP") is high enough in all the protected districts that there is no cognizable violation of the law. The entire bipartisan legislative delegation from that county approved the lines, constituting what is commonly known as a "drop in" plan affecting only the districts in that county. Any purported challenge to the Bexar County districts is without foundation.

Though the plaintiffs claim that the State impermissibly reduced the "performance" of House District 117 in Bexar County, there is no caselaw supporting the notion that what matters is election performance instead of opportunity to elect. Rather,

"the ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race." *Johnson v. De Grandy*, 512 U.S. 997, 1014 n.11 (1994). Similarly, in *LULAC v. Perry*, 548 U.S. 399, 428 (2006), the Court applied the *De Grandy* quotation, saying, "Furthermore, to the extent the District Court suggested that District 23 was not a Latino opportunity district in 2002 simply because Bonilla [a Republican] prevailed, it was incorrect. The circumstance that a group does not win elections does not resolve the issue of vote dilution." Instead, in order that courts and legislatures can operate on the basis of clear, predictable standards, the Supreme Court has adopted a bright-line rule of defining a *Gingles* district as one with a majority-minority of eligible voters. *See Bartlett v. Strickland*, 556 U.S. 1, __, 129 S. Ct. 1231, 1244-45 (2009).

We should not use, as the majority apparently does, past elections as a crystal ball to predict how future elections will turn out, for this court is prevented from making such complex political predictions tied to race-based assumptions. *Id.* Nothing in the State's enacted plan will hinder, in the slightest, Hispanic opportunity to register and vote in greater numbers than before. Election performance in this context is relevant only if plaintiffs can show that the State is causing lower turnout by some electoral device that violates the VRA, then packing those low-turnout voters into a VRA-protected district.

The plaintiffs make no such showing. The question is thus whether the State is causing minorities not to elect candidate of their choice, or

whether instead that is caused by other factors unrelated to state action. Even if election performance were relevant to a VRA claim, any such relevance would be a novel interpretation of the VRA that would be inappropriate during this interim stage.

The VRA therefore does not prevent this court from adopting the State's proposal for District 117, because nothing in that enactment would mean that Hispanics "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Thornburg v. Gingles*, 478 U.S. 30, 43 (1986).

The majority repeats its Bexar County mistake in El Paso County, another "drop in" county, as to which no member of the El Paso delegation—which is 80% Democrat and 80% Hispanic—raised any objection before enactment. The enacted plan maintains the *status quo* in El Paso: five minority opportunity districts, with one of them likely to elect a Republican. The worst that can be said of the enacted El Paso County districts is that they are possibly the result of partisan gerrymandering—a questionable claim given *Vieth v. Jubelirer*, 541 U.S. 467 (2004)—but the HCVAP in all five El Paso County districts is high enough to escape meaningful challenge under the VRA.

Additionally, the majority equalizes the populations of the districts in Tarrant County, where the plaintiffs had offered no evidence that the slight population deviations were the result of racial gerrymandering. The only challenge to the Tarrant County map is a vague allegation of packing, with no

evidence to support it. Indeed, the majority took minority voters away where it matters most: As a result of the majority's evening out of the populations, the new coalition district that the State had enacted in Tarrant County contains fewer minority voters in the majority's plan. If the Legislature used population deviation to racially gerrymander the county, it did not do so to favor whites. This claim was not likely to succeed and does not merit a radical redrawing of Tarrant County.

Additionally, the majority creates a new coalition minority opportunity district in Dallas County (District 107). Even leaving aside the question whether courts can ever mandate minority "coalition" districts, the majority seems to draw this district merely because it *can* be drawn. But no such district is required under section 2, and the State's plan creates no retrogression under section 5. Thus, the majority's meddlings in Dallas County stem solely from the majority's policy preferences, which are not an appropriate justification for judicial action.

Contrary to what seems to be the majority's approach, merely because the plaintiffs can satisfy the *Gingles* factors (which require a showing that a compact majority-minority district can be drawn and that voter polarization exists), section 2 requires the drawing of new minority opportunity districts in only the most limited circumstances. Such districts are permitted only where the totality of the circumstances shows that minorities have less of an opportunity than do other members of the electorate to participate in the political process and to elect representatives of their choice *absent the drawing of*

that new district. Thornburg v. Gingles, 478 U.S. 30, 43 (1986). Courts are forbidden from drawing new minority opportunity districts without that type of section 2 finding. *Voinovich*, 507 U.S. at 156.

Indeed, the majority's general approach of maximizing the drawing of minority opportunity districts that satisfy the *Gingles* preconditions was specifically rejected in *Johnson v. De Grandy*, 512 U.S. 997, 1016-17 (1994):

> It may be that the significance of the facts under § 2 was obscured by the rule of thumb apparently adopted by the District Court, that anything short of the maximum number of majority-minority districts consistent with the *Gingles* conditions would violate § 2, at least where societal discrimination against the minority had occurred and continued to occur. But reading the first *Gingles* condition in effect to define dilution as a failure to maximize in the face of bloc voting (plus some other incidents of societal bias to be expected where bloc voting occurs) causes its own dangers, and they are not to be courted.
>
> . . . [R]eading § 2 to define dilution as any failure to maximize tends to obscure the very object of the statute and to run counter to its textually stated purpose. One may suspect vote dilution from political famine, but one is not entitled to suspect (much less infer) dilution from mere failure to guarantee a political feast. . . . Failure to maximize cannot be the measure of § 2.

Given the fact-intensive analysis required to find a section 2 violation and the sensitive and constitutionally questionable judgments involved in drawing—as the majority does—a new district based primarily on race, the creation of such a district should be left to the Legislature (or, some would argue, to a three-judge court at the remedial stage after full consideration of the evidence). In no event is such a district justified by court order as part of an interim plan.

The majority creates a new Hispanic opportunity district (District 144) in Harris County. For the same reasons as with District 107 in Dallas County, that 25 district should await, at least, the remedial phase or a future legislative session. Nevertheless, the plaintiffs argue that the State's alterations to District 144 were intended to dismantle an "emerging" minority opportunity district. Although it is true that states are forbidden from modifying districts in which minorities are poised to elect the candidate of their choice because of natural population growth, *LULAC v. Perry*, 548 U.S. 399, 440-42 (2006), District 144 is nowhere near that point. Eastern Harris County is not an area of particularly rapid growth, and Hispanics represent less than 35% of the citizen voting age population—a stark contrast with *LULAC v. Perry*, where the challenged district had already reached majority HCVAP under the benchmark plan and was located in a rapidly growing area. Thus, at this interim stage, the court is not justified in creating a new Hispanic opportunity district in Harris County, nor

can it be said that it has restored an "emerging" one.[9]

The majority creates a new coalition district, also, in Fort Bend County (District 26). Even if a court could validly require the drawing of coalition districts, this particular district is impermissible, because it fails to meet the *Gingles* preconditions. As proposed, it has a combined HCVAP and BCVAP of only 30.2%, meaning that the sizeable Asian community (with a CVAP of 24.1%) would need to vote cohesively with blacks and Hispanics to elect their candidate of choice. *LULAC v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (en banc). But the plaintiffs have presented scant hard statistical evidence that Asians in Texas reliably vote cohesively with other minorities. That lack of cohesion is supported by the fact that new District 26 elects the minority candidate of choice in only a few reconstituted elections. Thus the majority, in an honest attempt to comply with section 2, instead engages in unconstitutional racial gerrymandering without section 2 as an even colorable legal justification. If a "coalition district" in District 26 is a good idea, but not required, it must be implemented by the legitimate policymakers and not the courts.

The same is true in Bell County, where the majority fashions a new minority coalition district out of whole cloth (District 54). Again, this district relies on a sizeable (albeit smaller) Asian community

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[9] The majority's insertion of the new opportunity district also forces changes in myriad other districts in Harris County, producing unintended consequences, in those districts, unrelated to the VRA or the Constitution.

to raise minority CVAP levels over 50%, but also again there is little to no hard statistical evidence that cohesion exists among Asians and blacks and Hispanics, and reconstituted election analyses show that minorities will only sometimes elect their candidate of choice in this new district. There is no legal requirement to create coalition districts (and certainly not one like this), even for the Legislature, and it is surely not appropriate for a court that is fashioning only interim relief.

And finally, even in uncontested rural areas, such as those in Northwest and East Texas, as to which no plaintiffs have brought specific challenges, the majority meddles with the enacted plan. This affront to the many small political judgments made by the Legislature in drawing the details of those districts cannot be justified by anything in the VRA or by slight reductions in population deviation, which are required only in a remedial stage after a court has formally found definite violations of federal law. *See Seamon*, 456 U.S. at 42-43.

In summary, it is difficult to overstate what the majority—with the purest of intentions—has wrought in ordaining its ambitious scheme. Its plan is far-reaching and extreme. It expands the role of a three-judge interim court well beyond what is legal, practical, or fair.

The majority should also consider the long-term implications of its interim plan and, in particular, the down-the-road political effects of drawing a map that casts aside legislative will. Once the D.C. Court and this court have ruled on the VRA and constitutional issues, we are bound by *Upham* to

defer to the legislatively-enacted plan for districts that are found to comport with federal law. Thus, in all likelihood, Texas will eventually conduct elections under the State's enacted plan for the vast majority of its districts.

If this court had chosen substantially to respect the state-enacted plan in drawing an interim map, there would have been great continuity between the 27 2012 elections and those that will take place for the rest of the decade. To the contrary, however, the majority's approach of readily accepting the plaintiffs' allegations yields the result that only a handful of the 150 districts in the Texas House of Representatives will remain the same between the 2012 elections and those that follow. Instead of requiring only a few districts to change, the majority has forced the State to move the lines of scores of districts twice in only four years, creating large administrative costs, forcing incumbents to campaign in new, unfamiliar areas, preventing long-term relationships between representatives and their constituents, and reducing political accountability.

In the end, my proposed map does not create any section 2 or section 5 problems, and it is true to the Fourteenth Amendment. And, under my approach, the plaintiffs by no means go away empty-handed. In addition to creating a new minority opportunity district in Tarrant County, as did the State, my map restores a minority opportunity district in Nueces County and another in western Harris County, for a total of fifty-two minority opportunity districts. Additionally, a new Hispanic district is created wholly within Hidalgo County, and

another Hidalgo County district is restored to its previous configuration, as the plaintiffs request.

In the plan I present, both average and top-to-bottom population deviations are under 10%, and, in response to the plaintiffs' allegations of discrimination in Dallas and Harris Counties, I eliminate any deviations correlated with partisan or racial demographics. The County Line Rule is respected unless federal law dictates otherwise, and, as a pragmatic concern, many precincts that were split in the enacted plan have been restored. My plan also pairs ten fewer incumbents into the same district than does the majority's. All this is accomplished without unnecessary intrusions into legislative enactments, unlike the majority's scheme, which, among other things, draws many districts not mandated by section 2 and does so using race as a primary motivating factor.

Justice Samuel Alito, in a recent debate discussing "activist judges," explained that judges are not theorists or social reformers. "Judging is a craft," he said. "It's not a science. It cannot be reduced to an algorithm."[10] That sentiment could not be more true for a three-judge court necessarily thrust into the role of issuing an interim redistricting plan.[11] At the present stage of this complex litigation, this panel should be modest and restrained in doing justice and should engage in the

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[10] *The Star-Ledger*, Nov. 15, 2011, *available at* http://blog.nj.com/ledgerupdates_impact/-print.html?entry=/2011/11/us_supreme_court_justice_to_ru.html.

[11] *See* note 5, *supra*.

"craft" of fashioning an interim plan that, instead of baldly adopting the allegations in the complaints, does justice by taking into account all the considerations I have described.

I have offered a moderate approach that recognizes and remedies the most potent claims brought against the legislative plan while leaving any more ambitious tinkering to a later judicial phase or to future legislative enactments. Because the conscientious and well-intentioned majority has ventured far beyond its proper role in announcing an interim redistricting plan for the Texas House of Representatives, I respectfully dissent, and I offer this alternate plan in response, in the hope that on appeal, the Supreme Court will provide appropriate and immediate guidance.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/23/11
Document 526

ORDER

The Court may offer plan C220 as the proposed interim plan for the districts used to elect members in 2012 to the United States House of Representatives.

This proposed plan may be viewed on the District View website operated by the Texas Legislative Council (http://gis1.tlc.state.tx.us/) under the category "Exhibits for Perez et al." Additional data on the proposed plan can be found at the following website location maintained by the Texas Legislative Council under the "Announcements" banner: http://www.tlc.state.tx.us/redist/redist.htm.

Recognizing that many are already traveling for the Thanksgiving holiday, the parties are ordered to access these proposed plans and file any comments

and/or objections via CM/ECF no later than twelve o'clock noon on Friday, November 25, 2011.[1]

SIGNED this 23 day of November, 2011

/s/

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

[1] Judge Smith disagrees. Because filing for office is currently set to begin on Monday November 28 (unless that schedule issue is stayed or modified), the parties should be required to comment on the Congressional plan by the close of business on Wednesday November 23 so that the court can get a final order in place for the Congressional plan in plenty of time on Friday November 25 that the parties can take any appropriate action that day.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-360

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/17/11
Document 517

ORDER

Judges Garcia and Rodriguez may offer plan H298 as the proposed interim plan for the districts used to elect members in 2012 to the Texas House of Representatives. Judge Smith may offer plan H299 as an alternative in dissent.

These plans may be viewed on the DistrictViewer website operated by the Texas Legislative Council (http://gis1.tlc.state.tx.us/) under the category "Exhibits for Perez et al."

The parties are ordered to access these proposed plans and file any comments and/or objections via CM/ECF no later than noon, Friday, November 18, 2011.

SIGNED this 17th day of November, 2011.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/07/11
Document 489

AMENDED ORDER

This amendment to the Court's order dated November 4, 2011 makes only one correction to the date contained in subsection 1.

The Court is entertaining various issues pertaining to redistricting of the United States House of Representatives, the Texas House of Representatives and the Texas State Senate. In order to provide the Court time to enter necessary orders, the following relief is hereby granted:

Residency

Section 7, Article III, of the Texas Constitution, requires that a person seeking election to the Texas House of Representatives must be a resident of the district the person seeks to represent for one year prior to the person's election as a representative.

Section 6, Article III, of the Texas Constitution, provides the same requirement for a candidate for the Texas State Senate.

Section 23, Article III, of the Texas Constitution, provides that a senator or representative who removes his or her residence from the district for which elected vacates the office of senator or representative.

Since the composition of House and Senate districts in which candidates might offer themselves are uncertain until the Court enters an order pertaining to the districts of the offices described above, and to be fair to the present officeholders, potential candidates and the citizens of Texas, the court finds it necessary to modify the foregoing residence requirements.

Therefore, it is ORDERED that for the 2012 elections to the Texas House of Representatives and Texas Senate a person must be a resident of the district the person seeks to represent from December 15, 2011 until the date of the General Election, and it is,

It is further ORDERED that an incorrect precinct designation on an application for a place on the ballot shall not render the application invalid if the designation is corrected on or before December 19, 2011.

An application for a place on the ballot for the office of precinct chair shall not be invalid if filed more than 90 days before the end of the filing period.

Schedule

The Court hereby adopts and orders this procedure with respect to the 2012 Primary Election for federal, state, county and local offices. All those dates, deadlines or requirements not specifically adjusted by this order remain as required under state or federal law:

a. The deadline for county chairs and state chairs to post notice of the dates of the candidate filing period in a public place in a building in which the chair has an office, as described in Texas Election Code § 141.040 is November 11,2011.

b. The first day to file an application for a place on the Primary Ballot as described in Texas Election Code § 172.023(b) shall be November 28, 2011.

c. An application for a place on the general primary election ballot must be filed not later than 6 p.m. on December 15, 2011 as described in Texas Election Code § 172.023(a)

d. The last day a vacancy for an unexpired term in an office of the state or county government may occur and appear on the primary ballot, as described in Texas Election Code § 202.004(a), is December 10, 2011.

e. The deadline for the county chair (or secretary of the county executive committee) to post a notice on the

bulletin board used for posting notices of the commissioners court's meetings, containing the address at which the county chair and secretary of the county executive committee will be available to receive applications on the last day for filing an application, as described in Texas Election Code § 172.022, is December 14, 2011.

f. If a candidate withdraws, dies or is declared ineligible by December 16, 2011, the name is omitted from the primary ballot as described Texas Election Code § 172.057 & 172.058.

g. The deadline for state chair to deliver certified list of statewide and multi-county district candidates to each county chair, as described in Texas Election Code § 172.028(b), is December 19, 2011.

h. Deadline for a write-in candidate for the office of county or precinct chair to file a declaration of write-in, as described in Texas Election Code § 171.0231(d), is December 19, 2011.

i. The deadline for the state or county chair, as applicable, to receive applications for a place on the general primary election ballot for an unexpired term for a vacancy in an office of the state or county government that occurs on or before December 10, 2011, as

described in Texas Election Code § 202.004(b) is December 19, 2011.

j. The deadline for county executive committee to conduct drawing for candidate order on ballot at the county seat (unless committee provides by resolution that primary committee is to conduct drawing), as described in Texas Election Code § 172.082(c), is December 20, 2011.

k. The deadline the state chair shall deliver the chair's list to the secretary of state, and each county chair shall deliver a copy of the chair's list to the county clerk, the state chair, and the secretary of state as described in Texas Election Code § 172.029(c), is December 22, 2011.

l. If changes in county election precinct boundaries are necessary to give effect to a redistricting plan under Article III, Section 28, of the Texas Constitution, each commissioners court shall order the changes before December 13, 2011, as described in Texas Election Code § 42.032.

m. On or before January 13, 2012, the registrar shall issue a voter registration certificate to each voter in the county whose registration is effective on the preceding November 14 and whose name does not appear on the suspense

list, as described in Texas Election Code § 14.001.

Therefore, it is ORDERED that for the 2012 elections for federal, state, county and local officers shall proceed as required under state and federal law except as provided for above. The State of Texas through the Secretary of State shall deliver an exact duplicate of this order to all election officials and county chairs, to the extent possible, within three days. The order shall also be posted by the Secretary of State on its website and the official election calendar as posted on the Secretary of State's website shall be updated to reflect the terms of this order. The political parties shall deliver this order and notice thereof to county party chairs without delay.

SIGNED this 7 day of November, 2011.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

And on behalf of

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Xavier Rodriguez
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 10/04/11
Document 391

AMENDED ORDER

When this voting rights lawsuit began, the Court was aware of the task before it. Not only were the merits of the claims challenging, but the time frame in which the claims needed to be resolved was challenging. Because of other equally important issues facing our State, the legislature was not able to pass redistricting plans until the eleventh hour. The Court knew that time was of the essence and implemented an expedited schedule that began with the consolidation of multiple lawsuits from this and other districts. Trial on the merits began on September 6, 2011 and concluded on September 16, 2011. The parties have supplemented the record with additional evidence and they are now preparing their post trial briefs. The Court will be reviewing the evidence and the forthcoming briefs. However,

the law precludes this Court from issuing a final decision on the merits until there has been a determination on preclearance under Section 5 of the Voting Rights Act. Preclearance is not a function of this Court, and it has no control over the preclearance process. The State chose to initiate preclearance proceedings in the U.S. District Court for the District of Columbia instead of directly through the Department of Justice. That legally permissible choice likely has delayed a final decision on preclearance, possibly causing delays in the 2012 electoral process.

Because this Court cannot resolve the merits of this case until there is a determination on preclearance, its hands are tied. Although the Court will continue to review the evidence and post-trial submissions, it must remain in a holding pattern until the D.C. Court has spoken. The parties have kept the Court advised on the status of the preclearance proceedings, and it appears that those proceedings are far from the final decision-making phase. Thus, a resolution of the Section 5 preclearance issues prior to the upcoming election deadlines is becoming more unlikely.

With that in mind, and with the understanding that the Court will continue its work on the issues that are currently pending before it, the Court has an obligation to the public to consider other available options so that the 2012 election process may move forward. One of those options is the consideration of an interim court-ordered plan. However, even that process will take a tremendous amount of work with very little time to spare, if any. Thus, the Court will need full cooperation from the parties to continue

with their work on the challenged plans and, at the same time, assist the Court in its effort to prepare a possible interim plan that may be implemented as a fair and workable alternative. This is an unwelcome task that the Court would have preferred to leave to the Texas legislature, but there is no indication that the legislature will reconvene to undertake such a task anytime soon if at all.

It is therefore ORDERED that the following schedule is implemented, to run simultaneously with any other deadlines in this case, with the goal of implementing an interim plan in the event it becomes necessary:

1. The parties will file briefs by October 7, 2011, that may serve to advise and guide the Court on the process for devising any interim court drawn plans, including but not limited to:

    a. Any citations to cases in which a court drew interim plans under circumstances similar to those herein;

    b. How the legal parameters for interim plans differ from the standards for drawing remedial maps after a plan has failed to meet requirements under the Constitution or §2 or §5 the Voting Rights Act or any other applicable law;

    c. Whether there is any precedent for a court's implementation of the legislatively-adopted plan or the current benchmark plan for the State House of Representatives as an interim plan; and

d. The estimated time that it may take to devise two interim plans (Congressional and State House of Representatives).

2. The parties will prepare their respective proposed plans for the Court's consideration, and those plans will be fried no later than Monday, October 17, 2011. The plaintiffs are urged but not required to agree among themselves on the plans they submit. The proposed plans will include a detailed explanation of why the suggested plans comply with applicable legal standards.[1] Such explanation may include but is not limited to supporting data and expert opinions. The supporting data may be attached as an appendix. The parties should confer as much as possible in order to limit the objections thereto. The submission of and support of a plan by a party under this interim procedure will not be deemed to preclude or waive that party's right to contend that its favored plan (in the State's case, the legislatively-enacted plans or other plans the State may propose, and in the plaintiffs' case, other plans they may propose or have proposed) is also legally sound and, for any reason, more desirable.

3. The parties will respond to those proposed plans to which they have objections no later than Monday, October 24, 2011. The objections must be clear, concise and

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[1] See Chapman v. Meier, 420 U.S. 1, 26-27 (1975) and McDaniel v. Sanchez, 452 U.S. 130, 149 (1981).

supported by legal authority and/or affidavits of experts.

4. The parties will file a joint written advisory no later than Friday, October 28, 2011, informing the Court of the following:

   a. The estimated length of time for a hearing on the proposed plans;

   b. A list of witnesses and documents that they may offer at the hearing;

   c. Suggestions as to the manner in which evidence may be presented at the hearing;

   d. Any other matters that should be brought to the Court's attention at that time.

5. The Court will hold a hearing in which the parties will be expected to present their proposed plans. The hearing will begin at 8:00 a.m. on Monday, October 31, 2011. There will be a recess on November 1-2, with the hearing to continue at 8:00 a.m. on November 3rd and continue on November 4th if necessary. Each side will be given an opportunity to respond. The hearing will proceed in trial format, with opening statements, the presentation of the plans, and closing arguments with supporting legal authority.

6. The Court will appoint David Hanna and Clare Dyer of the Texas Legislative Council as independent technical advisors who will review the plans, advise the Court, and assist the Court in developing interim plans if the

> Court decides to proceed with interim plans. The advisors will be present at the hearing and available throughout the process, and other personnel of the Texas Legislative Council are permitted to assist as needed. If any party has an objection to the appointment of Mr. Hanna and/or Ms. Dyer, it should state its objection in its October 7 brief.

Again, this process is meant to ensure that the Court has a viable alternative in the event it becomes necessary. It does not supplant the ongoing review of the plans passed by the legislature. Likewise, nothing in this order should be construed as an indication that the Court or any of its judges has made a decision on any of the factual or legal issues raised, at trial or otherwise. Although the foregoing schedule and procedure is hereby implemented, the parties are permitted, in their responses, to recommend amendments or alternative procedures (agreed or contested) to achieve the necessary goals.

SIGNED this 4th day of October, 2011.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

And on behalf of

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

JA 221

Xavier Rodriguez
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 09/29/11
Document 380

ORDER ENJOINING THE IMPLEMENTATION OF VOTING CHANGES

The Court has considered Plaintiffs' Motion for Temporary Restraining Order (Dkt. # 375) and the State's response thereto (Dkt. # 379). After reviewing the motion, response and the applicable law, the Court finds that Plaintiffs' motion should be GRANTED as follows:

Because the redistricting plans for the Texas House of Representatives (Plan H283) and the United States House of Representatives (Plan Cl 85) have not been precleared pursuant to Section 5 of the Voting Rights Act, the plans may not be implemented. According to the Texas Election Code, any changes that must be made in the county election precinct boundaries "to give effect to a redistricting plan" must be finalized by October 1,

2011. Tex. Elec. Code Ann. § 42.032 (Vernon 2010). Because the redistricting plans have not been precleared pursuant to Section 5 of the Voting Rights Act, all persons or entities that would otherwise have a duty under Section 42.032 of the Texas Election Code are relieved of those duties until further order of the Court. Likewise, Section 14.001 of the Election Code requires that voter registration certificates be issued to each voter in the county. Because the county election precinct boundaries will not be finalized, the persons or entities that would otherwise have a duty to issue such registration certificates are relieved of those duties until further order of the Court.

The parties have agreed that the relief granted herein will be effective as a permanent injunction, subject to being lifted by order of the Court as appropriate.

It is the responsibility of Defendants to take reasonable measures to ensure that the appropriate elected and administrative officials in the various counties are timely notified of this order. If any persons or entities receiving such notice have questions about the effect of this order, they should contact the Attorney General's Office or the Office of the Secretary of State.

SIGNED this 29 day of September, 2011.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

And on behalf of

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Xavier Rodriguez
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR
[Lead case]

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 09/02/11
Document 285

ORDER

Pending before the Court is Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and, in the alternative, Motion for Judgment on the Pleadings (Dkt. # 209). Plaintiffs have filed responses thereto (Dkt. # 225, 226, 227, 230, 231, 232, 234, 236, 237, 239 and 240). Defendants also filed a reply (Dkt. # 249), and MALC filed a sur reply (Dkt. # 258). After reviewing the record and the applicable law, and after hearing the parties' oral arguments, the Court finds that Defendants' motions should be granted in part and denied in part, and the remaining claims will proceed to trial.

I.

Statement of the case

This is a voting rights case arising out of recently enacted legislative redistricting plans. The decennial census was conducted last year, pursuant to Article I, 2 of the U. S. Constitution. After the census figures were released, the State of Texas undertook redistricting efforts to apportion seats in the U. S. House of Representatives and the Texas House of Representatives. See U.S. CONST. Art. I, 2; see also TEX. CONST. Art. III, § 26.

The 82nd Texas Legislature enacted House Bill 150 ("H.B. 150"), which established a new redistricting plan for the Texas House of Representatives. ("Plan H283"). House Bill 150 was signed into law on or about June 17, 2011. The legislature also enacted Senate Bill 4 ("S.B. 4"), which established a new congressional redistricting plan for the State of Texas. ("Plan C185"). Senate Bill 4, as amended, was signed into law on or about July 18, 2011. A lawsuit for judicial preclearance of both plans has been filed and is currently pending in the U.S. District Court for the District of Columbia. The plaintiffs herein challenge the legality of the new redistricting plans and seek to enjoin Defendants from implementing the plans.

II.

The parties' claims and defenses

There are numerous parties to this consolidated action, and most of the pleadings have been amended since the inception of the lawsuit. The live

pleadings, and the claims and defenses asserted therein, may be summarized as follows:

A. The Quesada plaintiffs:[1]

These plaintiffs include Margarita Quesada, Romeo Munoz, Marc Veasey, Jane Hamilton, Lyman King, John Jenkins, Kathleen Maria Shaw, Debbie Allen, Jamaal R. Smith, and Sandra Puente. They describe themselves as Hispanic and African-American citizens and registered voters that reside in current congressional districts 6, 9, 18, 20, 24, 26, 29, 30 and 33.

The Quesada plaintiffs challenge the legality of Plan C185, the congressional redistricting plan. They allege that the plan clearly dilutes the voting strength of African-American and Hispanic voters. They claim that the districts in Plan Cl 85 are "racial gerrymanders" and the plan intentionally discriminates against Hispanic and African-American persons, in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. They also assert that Plan C185 is a "blatant partisan gerrymander," in violation of Article I, Sections 2 and 4 of the US. Constitution, and the First and Fourteenth Amendments to the U.S. Constitution. The Quesada plaintiffs allege that Plan C185 violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973, because minority voters are denied an equal opportunity to effectively participate in the political process and will not have any meaningful influence in elections

[1] The Quesada plaintiffs' live pleading is their first amended complaint, Dkt. # 105.

for Members of Congress in Texas. Finally, they assert that Plan C185 cannot be implemented because S.B. 4, as amended, has not been precleared pursuant to Section 5 of the Voting Rights Act. The Quesada plaintiffs request declaratory and injunctive relief and seek recovery of their costs and attorney's fees.

The Quesada plaintiffs name Rick Perry, Governor of the State of Texas, and Hope Andrade, the Texas Secretary of State, as defendants. They have filed an answer, generally denying the allegations and specifically asserting the following defenses: standing; immunity under the Eleventh Amendment; and, the cause of action under Section 5 of the Voting Rights Act is not justiciable.[2]

B. The MALC plaintiffs:[3]

The Mexican American Legislative Caucus ("MALC") is described as a non-profit organization established to serve members of the Texas House of Representatives that are elected from and represent constituencies in Latino majority districts. Many of the representatives elected to serve the districts are also Latino. Members of MALC are also registered voters in Texas, and participate in state and local elections.

MALC challenges the legality of Plan C185, the congressional redistricting plan, and Plan H283, the Texas House of Representatives redistricting plan.

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[2] The defendants' answer to the Quesada plaintiffs' first amended complaint is Dkt. # 195.

[3] The MALC plaintiffs' live pleading is their second amended complaint, Dkt. # 50.

MALC claims that both plans far exceed permissible deviation limits and cannot be justified by legitimate state redistricting interests. MALC alleges that the Texas legislature employed racial gerrymandering techniques to dilute the voting strength of Hispanics and limit the number of districts in which Hispanics can elect candidates of their choice. MALC asserts a cause of action under 42 U.S.C. § 1983 for intentional discrimination and "discriminatory effect" in violation of the Fourteenth and Fifteenth Amendments to the U.S. Constitution. MALC also brings an equal protection claim under 42 U.S.C. § 1983 for violations of the one person, one vote principle. MALC asserts a cause of action under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, alleging that Defendants used racial gerrymandering to dilute Hispanic voting strength and avoid drawing minority opportunity districts when such districts were clearly justified under the circumstances. Finally, MALC contends neither plan can be implemented because they have not been precleared pursuant to Section 5 of the Voting Rights Act. MALC requests declaratory and injunctive relief, and seeks recovery of all costs and fees.

The named defendants in MALC's complaint are: the State of Texas; Rick Perry, the Governor of the State of Texas; David Dewhurst, Lieutenant Governor for the State of Texas; and Joe Straus, Speaker of the Texas House of Representatives. They have filed an answer, generally denying the allegations and specifically asserting the following

defenses: standing; immunity under the Eleventh Amendment; and ripeness.[4]

C. The Latino Redistricting Task Force:[5]

The Latino Redistricting Task Force ("LRTF") describes itself as an unincorporated association of individuals and organizations committed to securing fair redistricting plans for Texas. The organizational members include Hispanics Organized for Political Education (HOPE), the Mexican American Bar Association, the National Organization for Mexican American Rights, the Southwest Voter Registration Education Project, the William C. Velasquez Institute, and the Southwest Workers' Union. The individual members are described as Latino registered voters who have been adversely affected by the dilution of Latino voting strength in the newly enacted redistricting plans.

The LRTF challenges the legality of Plan C185, the congressional redistricting plan, Plan H283, the Texas House of Representatives redistricting plan. As a result of the dramatic increase in the Latino population, which is geographically compact and politically cohesive, the creation of Latino-majority districts appeared axiomatic. However, the 82nd Legislature allegedly packed and fractured Latino voters into districts that ensured a loss in voting strength. The LRTF claims that both plans discriminate against them, in violation of the

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[4] Defendants' answer to MALC's second amended complaint is Dkt. # 110.

[5] The Latino Redistricting Task Force plaintiffs' live pleading is their second amended complaint, Dkt. # 68.

Fourteenth and Fifteenth Amendments to the U.S. Constitution. The LRTF asserts that both plans have the effect of "canceling out or minimizing" their voting strength as minorities and result in a denial or abridgement of their right to vote, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973. The LRTF also asserts that the plans cannot be implemented until they have received preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. The LRTF requests declaratory and injunctive relief and seeks recovery of their costs and fees.

The LRTF names Rick Perry, Governor of the State of Texas, and Hope Andrade, Secretary of State for the State of Texas, as defendants. They have fried an answer, generally denying the allegations and specifically asserting the following defenses: standing and Eleventh Amendment immunity.[6]

D. The Perez plaintiffs:[7]

The Perez plaintiffs are individuals who reside and vote in various counties in the State of Texas and have been adversely affected by the newly enacted redistricting plans. The Perez plaintiffs challenge the legality of Plan C185, the congressional redistricting plan, and Plan H283, the Texas House of Representatives redistricting plan. They assert that the minority populations in many

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[6] Defendants' answer to the Latino Redistricting Task Force's second amended complaint is Dkt. # 132

[7] The Perez plaintiffs' live pleading is their third amended complaint, Dkt. # 53

counties have been packed and/or fragmented for the purpose of diluting their voting strength. They claim that the plans are the result of racial and political gerrymandering and include population deviations well above constitutionally acceptable norms. They also claim that the misapplication of the prison population resulted in even more dramatic population deviations. The Perez plaintiffs claim that these actions by the State violate Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the U.S. Constitution. They seek declaratory and injunctive relief and recovery of their costs and fees.

The Perez plaintiffs name Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; Joe Straus, Speaker of the Texas House of Representatives; and, Hope Andrade, Secretary of State for the State of Texas, as defendants. They filed an answer, generally denying most of the allegations, and specifically assert the following defenses: (1) the classification of prisoners for purposes of redistricting is a nonjusticiable political question, which falls outside the Court's jurisdiction; (2) political gerrymandering is a nonjusticiable political question; (3) the Perez plaintiffs lack standing to challenge the classification of prisoners for purposes of redistricting; (4) the challenge to the classification of prisoners fails to state a claim upon which relief may be granted; (5) the Perez plaintiffs fail to state a claim against Lieutenant Governor Dewhurst and Speaker Straus for which relief may be granted because they do not have the authority to alter the redistricting plan and/or prevent an election from

going forward; and (6) Eleventh Amendment immunity.[8]

E. The Rodriguez plaintiffs:[9]

The Rodriguez plaintiffs include twelve individuals who reside and vote in current congressional districts 10, 12, 15, 16, 18, 20, 21, 25. All of the Rodriguez plaintiffs are minorities. The plaintiffs also include Travis County, Texas and the City of Austin, Texas.

The Rodriguez plaintiffs challenge the legality of Plan C185, the congressional redistricting plan. They claim that there were several areas of Texas in which majority-minority districts could have been created, based on the 2010 census data. Yet the Texas Legislature engaged in purposeful, race-based discrimination to ensure that the voting power of minority voters was diminished. They also assert that the Texas Legislature deliberately fractured the tri-ethnic coalition enjoyed by voters in Travis County and the City of Austin, and the legislature's blatant racial gerrymandering will effectively prevent minority voters from having any meaningful impact on congressional elections for the next ten years.

The Rodriguez plaintiffs bring causes of action under Section 2 of the Voting Rights Act, as well as the Fourteenth and Fifteenth Amendments to the

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[8] Defendants' answer to the Perez plaintiffs' third amended complaint is Dkt. # 131.

[9] The Rodriguez plaintiffs' live pleading is their first amended complaint, filed as Dkt. # 23 in Cause No. 11-CA-635 prior to consolidation.

U.S. Constitution. They further assert that Plan C185 cannot be implemented until precleared, pursuant to Section 5 of the Voting Rights Act. They seek declaratory and injunctive relief and recovery of their costs and fees.

The Rodriguez plaintiffs name the following persons and entities as defendants: Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; Joe Straus, Speaker of the Texas House of Representatives; Hope Andrade, Secretary of State for the State of Texas; Boyd Richie, Chair of the Texas Democratic Party; and, Steve Munisteri, Chair of the Republican Party of Texas. The defendants have fried an answer, generally denying most of the allegations and specifically asserting the following defenses: (1) the individual plaintiffs do not live in congressional district 27; thus, they lack standing to challenge the constitutionality of that district under Plan C185; (2) the Section 2 challenge to congressional districts that include Tarrant and Travis counties fails to state a claim upon which relief may be granted; (3) the Rodriguez plaintiffs cannot prove actual intent to discriminate based on race or ethnicity; (4) the Fifteenth Amendment claim must fail because the Rodriguez plaintiffs cannot prove that minorities are prevented from voting in congressional elections; (5) the Rodriguez plaintiffs lack standing to assert claims against Lieutenant Governor Dewhurst and Speaker Straus because their injuries are not traceable to them and neither the Lieutenant Governor nor the Speaker have the authority to take the corrective action being sought; and (6) the Section 5 claim is nonjusticiable, as

Defendants do not intend to implement the Plan until preclearance is granted.[10]

F. Mr. John Morris. individually:[11]

Mr. Morris sued individually, on behalf of himself only. He describes himself as a resident and registered voter in the 2d congressional district, which includes Harris County, Texas.

Mr. Morris challenges the legality of Plan C185, the congressional redistricting plan. He claims that the congressional district in which he resides was drastically changed as the result of partisan gerrymandering, effectively depriving him of his right to vote for the candidate of his choice. Plaintiff Morris asserts causes of action for violations of Article I, Section 2 of the U.S. Constitution and the First and Fourteenth Amendments to the U.S. Constitution. He seeks declaratory and injunctive relief, and recovery of any costs incurred herein.

Plaintiff Morris names Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; Joe Straus, Speaker of the Texas House of Representatives; and, Hope Andrade, Secretary of State for the State of Texas, as defendants. They have filed an answer, generally denying the allegations and specifically asserting the defenses of standing and Eleventh Amendment immunity.

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[10] Defendants' answer to the Rodriguez plaintiffs' first amended complaint is Dkt. # 133

[11] Plaintiff Morris' live pleading is his amended complaint, filed as Dkt. #7 in Cause No. 11-CA- 615 prior to consolidation.

G. Plaintiff-intervenor LULAC:[12]

LULAC is described as the oldest and largest national Hispanic civil rights organization, with a history of promoting voting rights on behalf of Hispanics and other minorities. Gabriel Rosales and others, who are individually named along with LULAC, are members of the organization. They are also registered voters in the State of Texas. They are collectively referred to as LULAC.

LULAC challenges the legality of Plan C 185, the congressional redistricting plan, Plan H283, the Texas House of Representatives redistricting plan. LULAC asserts that Hispanic growth exploded during the last ten years, as reflected in the 2010 census results. As a direct result of that growth, Texas was apportioned four new congressional districts. However, the Texas Legislature used racial gerrymandering to ensure that Hispanics would not be able to elect the candidate of their choice in any of the new districts. Plan H283 actually reduces the number of minority opportunity districts. LULAC claims that the plans dilute the voting strength of Hispanic and other minority voters, in violation of Section 2 of the Voting Rights Act. LULAC also claims that the State failed to accommodate the "undercount" of the Hispanic population in the census, further resulting in diminished voting strength in the Hispanic community. LULAC contends the plans contain substantial population disparities, in violation of the Fourteenth

[12] LULAC's live pleading is its first amended and supplemental complaint, Dkt. # 78.

Amendment's equal protection clause and the one person, one vote principle.

LULAC brings its claims under 42 U.S.C. § 1983 for violations of the Fourteenth and Fifteenth Amendments, based on allegations of intentional discrimination, discriminatory effect, and violations of the one person, one vote principle. LULAC also brings a cause of action under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, for dilution of minority voting strength. LULAC further contends that implementation of the plans prior to preclearance would violate Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. LULAC requests declaratory and injunctive relief, and seeks recovery of its costs and fees.

LULAC names as defendants: the State of Texas; Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; and, Joe Straus, Speaker of the Texas House of Representatives. They have filed an answer, generally denying the allegations and specifically asserting the following defenses: (1) Eleventh Amendment immunity; (2) the claim under Section 5 of the Voting Rights Act is not justiciable; and (3) LULAC "lacks standing" to pursue its claims against the Lieutenant Governor and Speaker of the House.[13]

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[13] The defendants' answer to plaintiff-intervenor LULAC's first amended and supplemental complaint is Dkt. # 188.

H. Plaintiff-intervenor NAACP:[14]

The NAACP plaintiff-intervenors include the Texas State Conference of NAACP Branches and individually named members and registered voters, including Howard Jefferson, Juanita Wallace, and Rev. Bill Lawson. They are referred to collectively as the NAACP plaintiff-intervenors.

The NAACP plaintiff-intervenors challenge the legality of Plan C185, the congressional redistricting plan, and Plan H283, the Texas House of Representatives redistricting plan. They contend that both plans dilute the voting strength of African-American voters. The 82 Texas Legislature was presented with plans that did not dilute minority voting strength, but rejected them. Instead, the Legislature enacted redistricting plans that split the minority voting bloc and preventing them from effectively participating in the political process. The NAACP plaintiff-intervenors allege that the newly-enacted plans were developed with the intent to disadvantage African-American and other minority voters. They alleged that the plans exceed permissible population variances, and clearly violate the one person, one vote principle. They also assert that the plans cannot be implemented until precleared, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

The NAACP plaintiff-intervenors assert a cause of action under 42 U.S.C. § 1983 for intentional discrimination and violations of the one person, one

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[14] Plaintiff-intervenor NAACP's live pleading is its amended complaint, Dkt. # 69.

vote principle embodied within the Fourteenth Amendment to the U.S. Constitution. They also assert a cause of action under Section 2 of the Voting Rights Act, 42 U.S.C. 1973, based on the dilution of minority voting strength. They also note that the plans cannot be implemented prior to preclearance, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. The NAACP plaintiff-intervenors request declaratory and injunctive relief and seek recovery of their costs and fees.

The NAACP plaintiff-intervenors name as defendants: the State of Texas; Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; Joe Straus, Speaker of the Texas House of Representatives; and, Hope Andrade, Secretary of State for the State of Texas. They have filed an answer, generally denying the allegations in the complaint and specifically asserting the following defenses: lack of standing and failure to state a claim against the Lieutenant Governor and Speaker of the House.[15]

[15] Defendants' answer to the NAACP plaintiff-intervenors' amended complaint is Dkt. # 194.

I. Congresspersons Eddie Bernice Johnson. Sheila Jackson-Lee. Alexander Green. and Henry Cuellar, appearing as plaintiff-intervenors:[16]

a. Congresspersons Johnson, Jackson-Lee and Green:

These are Texas African-American voters and members of Congress who reside, vote in and represent the districts affected by the newly enacted congressional redistricting plans. Congresspersons Johnson, Jackson-Lee, and Green challenge the legality of C185, the congressional redistricting plan. They allege that the plan dilutes the voting strength of African-American voters and they will not have an equal opportunity to elect candidates of their choice to Congress. The Congresspersons contend the plan unnecessarily splits politically cohesive minority groups, and is designed to minimize or cancel out minority voting strength, both now and in the future. They claim that Plan C185 is the result, in whole or in part, of intentional discrimination.

Congresspersons Johnson, Jackson-Lee and Green assert a cause of action under Section 2 of the Voting Rights Act. They also assert a cause of action under 42 U.S.C. § 1983, based on allegations of intentional discrimination and violations of the one person, one vote principle embodied within the Fourteenth Amendment to the U.S. Constitution. They also state that Plan C185, like the other plans, cannot be implemented until precleared, pursuant to

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[16] The Congresspersons' live pleadings are their original complaints, Dkt. # 71 and Dkt. # 222.

Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. The Congresspersons seek declaratory and injunctive relief, and the recovery of fees and costs.

Congresspersons Johnson, Jackson-Lee and Green name the following as defendants: the State of Texas; Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; Joe Straus, Speaker of the Texas House of Representatives; and Hope Andrade, Secretary of State for the State of Texas. Defendants have filed an answer, generally denying most of the allegations and specifically asserting that the Congresspersons "lack standing" to pursue claims against the Lieutenant Governor and Speaker of the House.[17]

b. Congressman Henry Cuellar:

Congressman Cuellar is a Latino voter from Webb County, and serves as a member of Congress. He challenges the legality of Plan C185, the congressional redistricting plan. He claims that the 2010 census data severely undercounts Latinos and using such data undervalues the vote of Texas Latinos. He asserts that the population disparities far exceed the allowable deviation under the U.S. Constitution, and violate the one person, one vote principle. Congressman Cuellar alleges that Latinos and African Americans vote as a group and are politically cohesive, but their voting strength will be diluted under the newly enacted redistricting plan. He claims that Plan C185 violates the rights of Latino voters under Section 2 of the Voting Rights

[17] The defendants' answer to the Congresspersons' original complaint is Dkt. # 193.

Act, as well as the Fourteenth and Fifteenth Amendments to the U.S. Constitution. He seeks declaratory and injunctive relief, and the recovery of his fees and costs.

Congressman Cuellar names as defendants: the State of Texas; Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; and, Joe Straus, Speaker of the Texas House of Representatives. Defendants have not yet filed answer to Congressman Cuellar's complaint.

J. Intervenor/Cross-claimants Texas Democratic Party and Mr. Boyd Richie:[18]

The Texas Democratic Party (TDP) and its chairman, Boyd Richie, have intervened and have also filed a cross claim herein. They challenge the legality of Plan C 185, the congressional redistricting plan, Plan H283, the Texas House of Representatives redistricting plan. The TDP and Richie claim that the plans are blatant partisan gerrymanders that thwart majority rule. The plans were drawn in an invidious manner, and have no legitimate legislative objective. They allege that the plans violate the First and Fourteenth Amendments, and Article I, Sections 2 and 4 of the U.S. Constitution. They also note that the plans cannot be implemented until precleared under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. They seek declaratory and injunctive relief and the recovery of costs and fees.

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[18] The TDP and Boyd Richie's cross-claim is Dkt. # 55.

The TDP and Mr. Richie name Rick Perry, Governor of the State of Texas, and Hope Andrade, Secretary of State for the State of Texas, as cross-defendants. They have filed an answer to the cross claim, generally denying most of the allegations and specifically asserting the following defenses: (1) Eleventh Amendment immunity; (2) political gerrymandering is a nonjusticiable political question; (2) the Cross-claimants fail to state a claim for violations of the First Amendment; and (3) any claim under Section 5 is nonjusticiable.[19]

III.

Grounds asserted for dismissal or judgment on the pleadings

Defendants have moved for dismissal or, in the alternative, judgment on the pleadings on the following grounds:

1. Political gerrymandering claims are nonjusticiable;
2. Plaintiffs Morris, MALC, and the Texas Latino Redistricting Task Force lack standing;
3. There is no viable claim for census undercount;
4. Claims based on the use of census data on prisoners must be dismissed as a matter of law; and
5. Plaintiffs fail to allege a case or controversy against the Lieutenant Governor and Speaker of the House.

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[19] The cross-defendants' answer to the TDP and Richie's Crossclaim is Dkt. # 167.

The Court held a pretrial conference on September 1, 2011, and the parties were given an opportunity to present oral argument on the issues herein. After hearing arguments of counsel, the Court ruled, on the record, that the motion to dismiss all claims against Lieutenant Governor Dewhurst and Speaker Straus is GRANTED, and the motion to dismiss MALC's claims based on standing is DENIED. Thus, the Court will only address those issues that remain.

IV.

Standing

Defendants have moved for dismissal under Fed.R.Civ.P. 12(b) (1), claiming that plaintiffs Morris and the Latino Redistricting Task Force lack standing to assert their claims herein.

"In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Article III. This is the threshold question in every federal case, determining the power of the court to entertain the suit. As an aspect of justiciability, the standing question is whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf." Warth v. Seldin, 422 U.S. 490, 498-99 (1975). "For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Id.* at

501; Ass'n of American Physicians & Surgeons. Inc. v. Texas Medical Bd., 627 F.3d 547, 550 (5th Cir. 2010). To establish standing at the pleadings stage, general factual allegations of injury resulting from the defendant's conduct may suffice. Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992).

1. Plaintiff Morris:

The State argues that plaintiff John T. Morris lacks standing to assert his vote dilution claim. The State concedes that Morris is a citizen, that he resides and is a registered voter in the Second Congressional District, and that his complaint concerns the effect of the redistricting plan on the Second Congressional District. (Dkt. # 209, P. 9). The State argues that Mr. Morris lacks standing because he is asserting the legal rights of third parties voters who were reapportioned to new congressional districts in surrounding counties—rather than his own. (Dkt. # 209, p. 9).

The State is incorrect. Morris does not argue that other persons' votes have been diluted. Morris contends that he has suffered an injury because his vote for his preferred candidate in his district has been diluted as a result of the redistricting plan.[20] That is a personalized injury sufficient to confer

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[20] While Mr. Morris doesn't express his political affiliation, the Court can fairly infer from his complaint that he identifies with the political party that was adversely affected by the redistricting. See. Vieth v. Pennvsvlvania, 188 F.Supp.2d 532, 540 (M.D. Pa. 2002) (a plaintiff that is a resident of the affected area and a member of an identifiable political group has standing to assert political gerrymandering).

standing.[21] The fact that his own vote has been allegedly diluted because some voters in his district have been moved to other districts is not an assertion of other voters' rights; it is only a factual assertion explaining how his own vote in his own district has been diluted. Mr. Morris has standing to assert his vote dilution claim, and the motion is DENIED on this issue.[22]

2. Latino Redistricting Task Force:

The State argues that the Latino Redistricting Task Force plaintiffs ("LRTF") lack standing to pursue certain claims. Plaintiffs alleging associational standing must demonstrate that: (1) the association's members, or any one of them, would have standing to sue in their own right; (2) the interests that the association seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires individual members' participation in the lawsuit.[23] Even when an association is involved, "Article III's requirement remains: the plaintiff still must allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants." Warth, 422 U.S. at 501. In a redistricting case, this

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[21] United States v. Hays, 515 U.S. 737, 745 (1995) (a plaintiff that resides in the affected district and has allegedly suffered personal harm as a result of the legislature's action has standing to challenge such action).

[22] But see discussion and ruling in Section V, *infra*.

[23] Summers v. Earth Island Inst., 129 S. Ct. 1142, 1149 (2009) (holding that plaintiff bears the burden to prove standing); Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977) (stating requirements for associational standing).

means that the person must live in the district they challenge. Shaw v. Hunt, 517 U.S. 899, 904 (1996).

The State argues that the LRTF plaintiffs have failed to show that they live in some of the challenged districts, namely congressional districts other than 6, 12, 23, 27, and Texas House districts other than 32 and 78. (Dkt. # 209, pp. 13-14). The State asks for more factual specificity than is required at this stage of the litigation, however. It is true that, at the summary judgment stage, to establish associational standing, an organization must name specific members who would be, or have been, directly affected by the allegedly illegal activity and provide affidavits with specific facts supporting its allegations. Summers, 129 5. Ct. at 1151-52; Lujan, 504 U.S. at 561. But "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." Lujan, 504 U.S. at 561. The Task Force states that it represents "Latino registered voters of Texas who reside in areas where Latino voting strength has been diluted by newly-enacted plans H283 and C185, and Latino registered voters of Texas who reside in areas where Latino-majority districts should have been created but were not in plans H283 and C185." (Dkt. # 68, p. 4). By stating that it is asserting claims on behalf ofLatino members who reside in districts where Latino voting strength has been diluted or Latino-majority districts should have been created but were not, the Task Force has properly alleged that it is representing members who suffered an injury-in-

fact. That is sufficient at this stage of the litigation. Defendants' motion to dismiss LRTF's claims for lack of standing is DENIED.

V.

Political or partisan gerrymander claims

The Quesada plaintiffs and John T. Morris allege that the congressional redistricting plan is a partisan gerrymander in violation of Article I, Sections 2 and 4, and the First and Fourteenth Amendments of the U.S. Constitution.[24] The Texas Democratic Party ("TDP") and its chairman Boyd Richie allege that the congressional redistricting plan i the redistricting plan for the Texas House of Representatives are both unconstitutional political gerrymanders, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; Article I, Sections 2 and 4 of the U.S. Constitution; and the First Amendment to the U.S. Constitution.[25] The Perez plaintiffs occasionally use the words "political gerrymander" in their complaint, but, notwithstanding the State's allegations, they made clear in their response to the motion to dismiss that they are making those statements only in the context of one person, one vote claims, and not as an independent political gerrymandering claim.[26]

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[24] 24Dkt # 105; Dkt. # 7, filed in I 1-CV-615 prior to consolidation.

[25] 25Dkt. # 55.

[26] 26Dkt. # 227, p. 5 ("The Larios claims which embody both racial and political gerrymander issues are one person-one vote contentions.")

The State asserts that plaintiffs' partisan gerrymandering claims are nonjusticiable political questions under Vieth v. Jubelirer, 541 U.S. 267 (2004). The justiciability issue is reviewed under Rule 12(b)(1) because "[t]he concept of justiciablity, as embodied in the political question doctrine, expresses the jurisdictional limitations imposed upon federal courts by the 'case or controversy' requirement of Article III." Spectrum Stores. Inc. v. Citgo Petroleum Corp., 632 F.3d 938, 948 (5th Cir. 201 I)(quoting Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208 (1974)).

In Vieth, a plurality of the Court concluded that political gerrymandering claims are indeed nonjusticiable political questions because no judicially discernible and manageable standard for adjudicating such claims exists. *Id.* at 305-06 (plurality opinion). Justice Kennedy concurred in the judgment. He agreed that plaintiffs' political gerrymandering claim should be dismissed, but he would not "foreclose all possibility of judicial relief if some limited and precise rationale were found to" decide political gerrymandering claims in the future. *Id.* at 306 (Kennedy, J., concurring in the judgment). Justice Kennedy's opinion is controlling, because it is the "position taken by those Members [of the Court] who concurred in the judgments on the narrowest grounds." Alperin v. Vatican Bank, 410 F.3d 532, 552 n.1 3 (9th Cir. 2005) (quoting Marks v. United States, 430 U.S. 188, 193 (1977)). Because Justice Kennedy's opinion left the door open on future political gerrymandering claims, the Court finds that such a claim is justiciable and dismissal for lack of jurisdiction is not appropriate under Rule 12(b) (1).

However, the political gerrymandering claims are viable only if there is a reliable legal standard that can be applied in determining the issues herein. As Justice Kennedy noted, there is no "agreed upon model of fair and effective representation," so determining whether political classifications are related to a legitimate legislative purpose is an "analysis difficult to pursue." Vieth, 541 U.S. at 307 (Kennedy, J., concurring). Because "there are yet no agreed upon substantive principles of fairness in districting, [courts] have no basis on which to define clear, manageable, and politically neutral standards for measuring the particular burden a given partisan classification imposes on representational rights." [4 at 307-08. Absent agreed-upon principles of fairness, "the results from one gerrymandering case to the next would likely be disparate and inconsistent." *Id.*, at 308. Accordingly, absent a "standard by which to measure the burden [plaintiffs] claim has been imposed on their representational rights," they cannot "establish that the alleged political classifications burden those same rights," and their claim must be dismissed. Vieth, 541 U.S. at 313 (Kennedy,J., concurring); accord LULAC v. Perry, 548 U.S. 399, 418 (2006) (opinion of Kennedy, J.) ("[A] successful claim attempting to identify unconstitutional acts of partisan gerrymandering must. . . show a burden, *as measured by a reliable standard*, on the complainants' representational rights.") (emphasis added).

The non-movants were given an opportunity, but they have not, as required by Vieth and LULAC, identified a reliable standard by which to measure the redistricting plan's alleged burden on their

representational rights. Mr. Morris does not propose any standard by which to measure such a burden. Initially, the TDP and Quesada plaintiffs' proposal was that we "treat[] partisan gerrymandering cases much like obscenity casescourts will know one when they see one." (Dkt. # 231, pp. 1-2, 9). During oral argument at the pretrial conference, they proposed a "totality of the circumstances" standard. This does not meet the Supreme Court's expectation of a "clear, manageable, and politically neutral" standard. See Vieth, 541 U.S. at 307-08 (Kennedy, j., concurring). Because the non-movants have failed to enunciate a reliable standard, their political gerrymandering claims should be dismissed on the pleadings pursuant to Rule 12(c).[27]

The Quesada plaintiffs also argue in the alternative that a standard could be developed at trial. They argue that nothing injustice Kennedy's opinion forecloses that possibility. But that ignores the fact that the Court dismissed the claim at issue in Vieth based on the insufficiency of the complaint, because it did not allege a manageable standard. *Id.* at 313 (Kennedy, j., concurring) (citing Fed. R. Civ. P. 12(b)(6)). We are bound by that approach, which accords with the black-letter principle that a complaint must state a valid claim for relief for

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[27] See Vieth, 541 U.S. at 313 (Kennedy, j., concurring) (dismissing case under Federal Rule of Civil Procedure I 2(b) (6) for failure to state a claim). The State moved to dismiss the political gerrymandering claim for lack of subject-matter jurisdiction under rule 12(b) (1), rather than for failure to state a claim under rule 12(b)(6) or judgment on the pleadings under 12(c). But the Court may construe the motion, in part, as a motion under Rule 12(c).

litigation to move forward. Providing a "reliable standard" for measuring the burden on plaintiffs's representational rights is necessary to state a claim for relief for political gerrymandering, see LULAC, 548 U.S. at 418. These plaintiffs' failure to provide one requires dismissal of their claim. This ruling does not affect the Perez plaintiffs' allegations supporting their one person, one vote claim. The Perez plaintiffs alleged both political and racial gerrymandering in support of their one person, one vote claim. The applicable standard will be the standard for analyzing a one person, one vote claim

VI.

Claims involving census undercount

Defendants have also moved for judgment on the pleadings, pursuant to Fed.R.Civ.P. 12(c), on the claims involving census undercount. A motion for judgment on the pleadings under Rule 12(c) is subject to the same standard as a motion to dismiss under Rule 12(b)(6). Doe v. MySpace, Inc., 528 F.3d 413, 418 (5th Cir. 2008). Thus, the complaint must contain enough facts that, accepted as true, state a claim to relief that is plausible on its face. Ashcroft v. Igbal, 129 S.Ct. 1937, 1949 (2009).

MALC and LULAC claim that the State has violated Section 2 of the Voting Rights Act by relying on unadjusted 2010 Census data, which undercounts Hispanics and thus dilutes the Hispanic vote. The State asserts that neither MALC nor LULAC have standing to bring their claim because neither can establish traceability or redressability. Specifically, the State alleges that the claim must fail because the plaintiffs fail to demonstrate that (1) the census

data is flawed; (2) how the data could be improved through modification or an alternative method; and (3) whether any such improvements would actually strengthen the Hispanic vote.

MALC asserts that the alleged undercount is not a standalone claim, but rather one of many factual allegations used to support their Section 2 vote dilution claim. To support this argument, they refer to pages 14 and 15 of their second amended complaint, which says that the undercount, together with other factors, "all work together to result in a violation of the right of Plaintiff as secured by Section 2." (Dkt. # 50, pp. 14-15).

The State's only response to this argument is that the Court should still dismiss MALC's Section 2 claim "to the extent it is based on an alleged census undercount." However, Rule 12(c) motions are vehicles for the dismissal of implausible claims, not the preclusion of certain facts that are alleged to support the claim. A party should not be foreclosed at this juncture from presenting certain facts at trial for a claim that is otherwise viable. Defendants' motion to dismiss the claims involving census undercount is DENIED.

VII.

Claims relating to the use of census data on prisoners

Defendants move under Rules 12(b)(1) and 12(c) to dismiss the Perez plaintiffs' challenge to the newly enacted redistricting plans to the extent that

theit challenge hinges on the State's alleged misapplication of the prison population.[28]

First, the State asserts that the issue is a nonjusticiable political question. As acknowledged in District of Columbia v. Dep't of Commerce, 789 F. Supp. 1179 (DD.C. 1992), a significant difference of opinion exists as to whether certain applications of the census data, and challenges thereto, constitute a political question. We join in District of Columbia v. Dep't of Commerce and find that this case does not constitute a nonjusticiable political question such that the Court would be barred from hearing it.

On the other hand, Plaintiffs' arguments have no legal basis and dismissal is appropriate as a matter of law. The Texas Election Code states that prisoners are not residents, for voting purposes, of the county where they are incarcerated. TEX. ELEC. CODE ANN. § 1.015(e) (Vernon 2010). Nevertheless, the U.S. Census Bureau counts them as such, and the Texas Constitution requires use of the census count as the basis for redistricting. TEX. CONST. Art. III, § 26. Thus, the State of Texas complied with the dictates of the Texas Constitution. While the State could enact a constitutional amendment or statute that modifies the count of prisoners as residents of whatever county they lived in prior to incarceration, there is no federal requirement to do so.

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[28] These allegations are not the sole basis for the Perez plaintiffs' challenge to the plans under Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the U.S. Constitution. Thus, their cause of action will survive regardless of the Court's ruling on this issue.

Plaintiffs rely on Mahan v. Howell, 410 U.S. 315 (1973), for the proposition that the census count for prisoners must be adjusted, and the State's failure to make such adjustment resulted in greater population deviation and a violation of the one person, one vote principle. The Mahan case involved the counting of navy personnel attached to ships "home-ported" in a district as residents of that district, even though very few actually resided in that district. When the district court invalidated the plan, on other grounds, it drew a new plan and changed the method by which naval personnel were assigned to a district. The Supreme Court affirmed that decision, stating:

> We conclude that under the unusual, if not unique, circumstances in this case the District Court did not err in declining to accord conclusive weight to the legislative reliance on census figures. That court justifiably found that with respect to the three single-member districts in question, the legislative plan resulted in both significant population disparities and the assignment of military personnel to vote in districts in which they admittedly did not reside. Since discriminatory treatment of military personnel in legislative reapportionment is constitutionally impermissible, we hold that the interim relief granted by the District Court as to the State Senate was within the bounds of the discretion confided to it.

Mahan, 410 U.S at 331-32 (citation omitted)(emphasis added). The facts herein are

clearly distinguishable. We are dealing with prisoners in permanent facilities, not navy personnel on a ship. The Supreme Court was concerned with the discriminatory treatment of military personnel, and there are no allegations in this case regarding the discriminatory treatment of prisoners. Nor can the Supreme Court's review of the court-drawn redistricting plan in Mahan be compared to the Court's review of the legislative redistricting plans herein. As the Supreme Court noted in Mahan, the district courts are allowed to use their discretion and apply equitable considerations in drawing remedial redistricting plans. *Id.* at 332. In this case, the Texas legislature was required to use the census count as the basis for redistricting.

The Supreme Court has not extended its holding in Mahan to prison counts, and the Court has not located any case where any court has concluded that such prison counts violate the mandates of the one person, one vote principle. As the Fifth Circuit stated in Chen v. City of Houston, 206 F.3d 502, 528 (5th Cir. 2000), "in the face of the lack of more definitive guidance from the Supreme Court, we conclude that this eminently political question has been left to the political process." Defendants' motion to dismiss the Perez plaintiffs' claims is GRANTED, but only to the extent their claims are based on the State's alleged misapplication of the census data on prisoners.

VIII.

Conclusion

It is therefore ORDERED that Defendants' Motion to Dismiss for Lack of Subject Matter

Jurisdiction and, in the alternative, Motion for Judgment on the Pleadings (Dkt. #209) is GRANTED IN PART as follows:

1. The political gerrymandering claims asserted by the Quesada plaintiffs, John T. Morris, Boyd Richie and the Texas Democratic Party are DISMISSED for failure to state a reliable standard. This was the only cause of action asserted by Plaintiff John T. Morris and Cross-claimants Texas Democratic Party and Mr. Boyd Richie. Thus, their complaints are dismissed in their entirety.
2. The Perez plaintiffs' claim based on the use of census data on prisoners is DISMISSED as a matter of law.
3. All claims against the Lieutenant Governor and Speaker of the House have been DISMISSED.

The motion is DENIED in all other respects, and the remaining claims will proceed to trial. Because his claims have been dismissed, Mr. Morris is not required to appear at trial on the merits. The TDP and Boyd Richie's cross claims have also been dismissed, but Court does note that the Rodriguez plaintiffs named Boyd Richie as a defendant. They should re-visit their pleadings and determine whether there is any reason to keep Mr. Richie in the lawsuit as a named defendant. If not, all claims against Mr. Richie should be dismissed prior to commencement of trial.

SIGNED this 2d day of September, 2011.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

And on behalf of

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Xavier Rodriguez
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF TEXAS