

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

SHANNON PEREZ, et al., )  
)  
*Plaintiffs,* )

- and - )

EDDIE BERNICE JOHNSON, et al., )  
)  
- and - )

TEXAS STATE CONFERENCE OF )  
NAACP BRANCHES, et al., )  
)  
*Plaintiff Intervenors,* )

v. )

RICK PERRY, et al., )  
)  
*Defendants,* )

---

MEXICAN AMERICAN LEGISLATIVE )  
CAUCUS, TEXAS HOUSE OF )  
REPRESENTATIVES (MALC), )  
)  
*Plaintiffs,* )

- and - )

HONORABLE HENRY CUELLAR, et al., )  
)  
*Plaintiff Intervenors,* )

v. )

STATE OF TEXAS, et al., )  
)  
*Defendants,* )

---

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

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

TEXAS LATINO REDISTRICTING TASK )  
FORCE, et al., )

*Plaintiffs,* )

v. )

RICK PERRY, et al., )

*Defendants,* )

---

MARAGARITA V. QUESADA, et al., )

*Plaintiffs,* )

v. )

RICK PERRY, et al., )

*Defendants,* )

---

JOHN T. MORRIS, )

*Plaintiff,* )

v. )

STATE OF TEXAS, et al., )

*Defendants,* )

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

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

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

EDDIE RODRIGUEZ, et al.,	)	CIVIL ACTION NO.
	)	SA-11-CA-635-OLG-JES-XR
	)	[Consolidated case]
<i>Plaintiffs,</i>	)	
	)	
v.	)	
	)	
STATE OF TEXAS, et al.,	)	
	)	
<i>Defendants.</i>	)	

**LATINO TASK FORCE PLAINTIFFS’ RESPONSE TO MOTION OF MARGARITA QUESADA ET AL. TO STAY PROCEEDINGS AND/OR TO POSTPONE TRIAL DATE**

TO THE HONORABLE PANEL:

COME NOW The plaintiffs in the case originally styled *Texas Latino Redistricting Task Force, et al. v. Rick Perry*, 5:11-cv-490 (the “*Latino Task Force* Plaintiffs”) and respond to Margarita Quesada, et al.’s Motion to Stay Proceedings and/or Postpone Trial Date. The *Latino Task Force* Plaintiffs do not oppose this Motion to the extent it seeks a postponed trial date of up to three weeks. However, the *Latino Task Force* Plaintiffs believe that trial should start no later than October 3, 2011, to preserve the ability of the parties to present evidence and of the Court to make a ruling before the press of upcoming election deadlines requires the implementation of new redistricting plans. A validly apportioned plan must be in place well in advance of the next primary elections, which the State will hold on Tuesday March 6, 2012.

**I. THE STATE MUST HOLD PRIMARY ELECTIONS IN MARCH, AND THERE ARE NO VALID DISTRICTS NOW.**

In less than seven months, Texas, the second most populous state in the nation, must hold statewide primary elections pursuant to a constitutionally valid districting plan that complies with the Voting Rights Act. The State of Texas filed a lawsuit seeking Section 5 preclearance in

the District Court of the District of Columbia on July 19, 2011. *Texas v. United States*, 1:11-cv-01303-RMC-TBG-BAH, Dkt. 1. There is one motion to intervene pending, and a three-judge panel has been convened. Otherwise, there has been little action on the docket, and it is impossible at this point to predict when the District of Columbia district court may rule. The D.C. court's inquiry is limited to Section 5 of the Voting Rights Act; preclearance only addresses the question of retrogression under Section 5; it will not result in a ruling that the plans at issue comply with Section 2 of the Voting Rights Act, the Fourteenth Amendment, and the Fifteenth Amendment. That is, either the Court will preclear the plans, and Plaintiffs' Section 2 and constitutional claims survive, or the Court will not preclear the plan, and Plaintiffs will have the same Section 2 claims that must be heard and ruled upon before the court remedies any malapportionment. In either event, this Court will need to hear evidence and make rulings well in advance of the March 2012 primaries.

**II. THE PRECLEARANCE PROCESS IS SEPARATE FROM OTHER PROCEEDINGS UNDER THE VOTING RIGHTS ACT.**

Contrary to the *Quesada* Plaintiffs' contentions, it is neither "axiomatic" nor required that the Court refrain from addressing statutory and constitutional challenges to statewide plans until preclearance is obtained. Contrary to the *Quesada* Plaintiffs' contention, it is neither "axiomatic" nor required that the Court must refrain from addressing statutory and constitutional challenges to statewide plans until preclearance is obtained. For example, in 2001, the Eastern District of Texas proceeded with its trial despite the fact that Texas had not secured a decision from DOJ on preclearance of its State House of Representatives plan. *See Balderas v. Texas*, No. 6:01-CV-158, 2001 WL 34104833, at \*1 (E.D. Tex. Nov. 28, 2001). The DOJ objected near the end of trial, but this did not invalidate any of the remaining claims regarding the need to implement a

legal and fair redistricting plan. *See id.* at \*2-3. Although the DOJ documented retrogression in four Latino opportunity districts, the court ultimately ordered the State to create five Latino opportunity districts in its remedy. *See id.* at \*3.

**III. MORE PREJUDICE WOULD INURE TO MORE PLAINTIFFS IF THE COURT STAYED THE CASE.**

The *Quesada* Plaintiffs complain that the accelerated trial schedule left them with less than 60 days to prepare their case and claim that the accelerated schedule prejudices them.

Redistricting cases happen quickly and on accelerated schedules. That is the nature of the beast. The federal government released the Texas Census data on February 17, 2011. Texas enacted House and congressional plans on June 17 and July 19, 2011. Texas must hold statewide primary elections on March 6, 2011 and cannot do so based on old districts. Thus, this trial must happen on an accelerated schedule. All parties experience time pressure with accelerated discovery, but this Court is limited in how long it may delay the trial and still ensure that the State meets its constitutionally required duties for the 2012 primary elections.

Further, it would prejudice the *Latino Task Force* Plaintiffs to lose their current opportunity to present evidence on their claims that, regardless whether the plans are precleared under Section 5, the enacted House and congressional plans violate the Constitution and Section 2 of the Voting Rights Act. The Court must hear a myriad of facts to determine how many majority-minority districts are required by Section 2 of the Voting Rights Act, where it is possible to draw those districts, and what a remedial plan would look like. This analysis must be done regardless of whether the plans are precleared or not.

Whether or not the District of Columbia court preclears the challenged plans in time for their implementation in the 2012 Primary, then trial on the constitutional claims and Section 2 of the

Voting Rights Act is appropriate. Similarly, if the District of Columbia court does not act on preclearance in time for the plans' implementation in the 2012 Primary, then trial on the constitutional claims and Section 2 of the Voting Rights Act is appropriate. The *Latino Task Force* Plaintiffs encourage the Court to hear the evidence on the trial schedule set forth and stay its ruling pending preclearance.

If the District of Columbia court does not rule quickly on preclearance, this case will convert to a malapportionment action. The Latino Task Force Plaintiffs' Section 2 and constitutional claims survive, and the evidence presented will be the same as if the District of Columbia court had precleared the plans. In this circumstance, the Court may wish to order a day or so of further fact presentation and briefing with regard to malapportionment specifically, but the core Section 2 and constitutional claims do not change. In this scenario, postponing trial as requested by the *Quesada* Plaintiffs would force the parties to litigate a last-minute malapportionment case, prejudicing the *Latino Task Force* Plaintiffs more than the current trial schedule, which is necessarily accelerated by the demands of the United States Constitution.

**IV. THE *QUESADA* PLAINTIFFS CONFLATE THE ANALYSES REQUIRED BY SECTIONS 2 AND 5 OF THE VOTING RIGHTS ACT.**

In encouraging the Court to stay the case, the *Quesada* Plaintiffs note that "the districts that are the focus of the Section 5 preclearance cases in the D.C. Court are the same ones at issue in this Court." Motion, at 6-7. Whether the same districts are at issue under Sections 2 and 5 of the Voting Rights Act is inapposite here. While it is true that some of the evidence presented may be the same, the legal analyses are different. A Section 2 claim follows the analysis laid out in *Thornburg v. Gingles*, 487 U.S. 30 (1986), to determine how many majority-minority districts

are required to be present in the new plan. A Section 5 claim turns on the question whether or not the proposed plans are retrogressive. *See Beer v. United States*, 425 U.S. 130, 141 (1976).

These are legally distinct analyses, and because the Section 2 claims survive in any circumstances, the fact that there will be some factual overlap in the presentation of Section 5 claims does not present a compelling reason to delay trial.

**V. THE COURT RETAINS JURISDICTION TO HEAR THE CLAIMS.**

Plaintiffs' claims are ripe, and the Court is required to determine what Section 2 and the United States Constitution require. No aspect of the pending preclearance action in the D.C. court precludes this Court from hearing and deciding Plaintiffs' claims. If preclearance is granted, the Court would then apply its conclusions to the enacted plan; if preclearance is denied, the Court would use its conclusions to choose a proposed plan or fashion an independent plan. Thus, while the Court cannot yet enter judgment on Plaintiffs' claims regarding specific maps, it retains jurisdiction

**VI. IF THE D.C. COURT REJECTS PRECLEARANCE, THE COURT WILL NEED TO SELECT, OR DRAW, A REMEDIAL PLAN.**

If the D.C. court denies preclearance after approximately mid-October, then this Court will be required to order a remedial plan into effect. Primary elections must be held in March 2012, and the Texas Secretary of State's website suggests that the congressional districts must be settled by December 12, 2012 (last day to file for a place on the ballot), although this date is subject to preclearance of a different law. Texas Secretary of State, *Important 2012 Election Dates*, <http://www.sos.state.tx.us/elections/voter/2012dates.shtml> (last accessed August 10, 2011); *Terrazas v. Clements*, 537 F. Supp. 514, 521-23 (W.D. Tex. 1982) (holding that latest

date that would allow primary to proceed as scheduled is the deadline for the issuance of a valid plan).

With December 12 as the effective deadline, there may not be enough time to allow the Texas Legislature to act. Under the most ideal circumstances for giving the State Legislature a chance to redraw the plans, the D.C. court would have to deny preclearance as soon as one month from now, September 10, 2011, but that seems unlikely if not impossible given the state of the docket. Then Governor Perry would have to call a special session, and the Legislature then would have to create a valid plan within a month's time, by October 10, 2011, and then submit it to the DOJ for successful preclearance by October 13, 2011. This highly unlikely scenario would leave no time to deal with any of the Plaintiffs' remaining Section 2 claims, or 14th and 15th Amendment claims. Thus, it is likely this Court will have to act in a remedial capacity.

**VII. THE SECTION 2 CLAIMS MUST BE ADJUDICATED TO ENSURE VALID PLANS FOR TEXAS, AND THE *LATINO TASK FORCE* PLAINTIFFS URGE THE COURT TO HEAR THESE CLAIMS AS SOON AS POSSIBLE.**

As described in Section III, above, this Court has before it the *Latino Task Force* Plaintiffs' Section 2 and constitutional claims. Analysis of Texas's population, history of discrimination, and polarized voting is required to adjudicate these claims, no matter the outcome of the preclearance action. The *Latino Task Force* urges the Court to hear them as soon as possible, but no later than a trial beginning on October 3.

The *Latino Task Force* Plaintiffs do not think bifurcating these issues is advisable or judicially efficient. No part of the *Latino Task Force* case should be stayed because of the independent proceedings in the D.C. court. The issues do not overlap, and the issues in front of

this Court today will survive whatever decision the D.C. court makes. Further, bifurcating would be an inefficient use of every party's precious resources. The parties will present, and this Court will consider, the same facts no matter the resolution of the preclearance action. The Latino Task Force Plaintiffs respectfully urge the Court to hear all the facts and legal arguments in September or October, and then withhold judgment until the resolution of the preclearance action or until this Court is compelled to act to remedy malapportionment.

#### **VIII. SUPPLEMENTAL BRIEFING**

The *Latino Task Force* Plaintiffs note that Movants filed a substantial supplemental brief at around 1:00 p.m. today, three hours before the deadline to file this response. The *Latino Task Force* Plaintiffs respectfully request additional time to respond to this brief.

#### **IX. CONCLUSION**

Section 2 claims survive in either scenario. In light of the schedule evolving in the District of Columbia court, it is highly likely that this Court will have to issue a remedial map in either scenario. Thus, the Latino Task Force Plaintiffs urge the Court to postpone the trial no more than 3 weeks, if at all, and merely stay its rulings pending the outcome of the preclearance action.

Dated: August 10, 2011

Respectfully submitted,

/s/ Nina Perales

Nina Perales

Marisa Bono

Rebecca M. Couto

MALDEF

110 Broadway Street, #300

San Antonio, TX 78205

(210) 224-5476

Fax: (210) 224-5382

Robert W. Wilson  
Mark Anthony Sanchez  
Gale, Wilson & Sanchez, PLLC  
115 East Travis, 19th Floor  
San Antonio, TX 78205  
(210) 222-8899  
Fax: (210) 222-9526

COUNSEL FOR PLAINTIFFS TEXAS LATINO  
REDISTRICTING TASK FORCE, ARMANDO  
CORTEZ, SOCORRO RAMOS, GREGORIO  
BENITO PALOMINO, FLORINDA CHAVEZ,  
CYNTHIA VALADEZ, CESAR EDUARDO  
YEVENES, SERGIO CORONADO, GILBERTO  
TORRES, RENATO DE LOS SANTOS, JOEY  
CARDENAS, ALEX JIMENEZ, EMELDA  
MENENDEZ, TOMACITA OLIVARES, JOSE  
OLIVARES, ALEJANDRO ORTIZ, AND  
REBECCA ORTIZ

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that she has electronically submitted a true and correct copy of the above and foregoing via the Court's electronic filing system on the 10th day of August, 2011. The undersigned counsel hereby certifies that she caused a true and correct copy of the above and foregoing to be mailed to the persons listed below by the close of the next business day.

/s/ Rebecca M. Couto  
Rebecca M. Couto

David Escamilla  
Travis County Asst. Attorney  
P.O. Box 1748  
Austin, TX 78767

Jesse Gaines  
Attorney at Law  
PO Box 50093  
Ft. Worth, TX 76105

Jessica Ring Amunson  
Jenner & Block LLP  
1099 New York Ave., N.W.

Washington, DC 20001

Joaquin Guadalupe Avila  
P.O. Box 33687  
Seattle, WA 98133

John K. Tanner  
John Tanner Law Office  
3743 Military Rd. NW  
Washington, DC 20015

Karen M. Kennard  
City of Austin Law Department  
PO Box 1088  
Austin, TX 78767-1088

Michael B. DeSanctis  
Jenner & Block, LLC  
1099 New York Ave., N.W.  
Washington, DC 20001

Paul M. Smith  
Jenner & Block LLP  
1099 New York Ave., N.W.  
Washington, DC 20001