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

SHANNON PEREZ, et al., Plaintiffs, v. STATE OF TEXAS, et al., Defendants.	§ § § § § § §	CIVIL ACTION NO. 11-CA-360-OLG-JES-XR [Lead Case]
MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES, Plaintiffs, v. STATE OF TEXAS, et al., Defendants.	§ § § § § § § §	CIVIL ACTION NO. SA-11-CA-361-OLG-JES-XR [Consolidated Case]
TEXAS LATINO REDISTRICTING TASK FORCE, et al., Plaintiffs, v. RICK PERRY, Defendant.	§ § § § § §	CIVIL ACTION NO. SA-11-CA-490-OLG-JES-XR [Consolidated Case]
MARGARITA V. QUESADA, et al., Plaintiffs, v. RICK PERRY, et al., Defendants.	§ § § § § §	CIVIL ACTION NO. SA-11-CA-592-OLG-JES-XR [Consolidated Case]

JOHN T. MORRIS, Plaintiff, v. STATE OF TEXAS, et al., Defendants.	§ § § § § §	CIVIL ACTION NO. SA-11-CA-615-OLG-JES-XR [Consolidated Case]

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EDDIE RODRIGUEZ, et al., Plaintiffs, v. RICK PERRY, et al., Defendants.	§ § § § § §	CIVIL ACTION NO. SA-11-CA-635-OLG-JES-XR [Consolidated Case]

RODRIGUEZ PLAINTIFFS' RESPONSE TO PROPOSED INTERIM PLAN SUBMISSIONS BY OTHER PARTIES

The Rodriguez plaintiffs submit the following objections as directed by paragraph 3 of the Court's Amended Order of October 4, 2011. Objections to the state plan are in Part I, below, at pages 2-6. Objections to other plans, as they affect specific areas of the state, are in Part III, below, as follows: Part III.B (Travis County), at pages 8-14; Part III.C (Bexar County), at pages 14-15; Part III.D (Harris County), at page 16; Part III.E (Hidalgo County and Rio Grande Valley), at pages 16-17; and Part III.F (El Paso County), at page 17. Part II, at pages 6-7, discusses a recent U.S. expert report identifying Plan C166 as an example of a way to create additional minority districts.

I. Plan C185 (state plan)

As of now, there is no preclearance determination as to Plan C185, the state's congressional plan. Consequently, as a matter of federal law, Plan C185 is not "effective as law." *Clark v. Roemer*, 500 U.S. 646, 652 (1991) ("voting change" in covered jurisdiction "will not be effective as law until and unless" precleared). In this circumstance, the plaintiffs are entitled to an

injunction prohibiting the electoral changes contained in Plan C185 from being implemented. *Id*. at 652-53.[1]

For this election cycle, the state seeks an end-run around Section 5 preclearance rules, apparently asking the Court to order use of Plan C185 even though it has not cleared the necessary Section 5 hurdles. Defendants' Advisory Regarding Interim Reapportionment (Dkt. #405) ("State Remedy Advisory") at 8. But, faced with the absence of a preclearance determination but the necessity of having *some* redistricting plan operative for the upcoming 2012 elections, the Court cannot simply order use of the state's plan on an interim basis. As already explained in the multi-plaintiff filing on interim remedies, this approach would itself trigger preclearance requirements because the interim plan then would embody the state's policy choices. Plaintiffs' Remedy Br. (Dkt. #404) at 3-4, citing *McDaniel v. Sanchez*, 452 U.S. 130, 153 (1981).

The state argues that the Court's interim remedy options are constrained to only the narrowest of modifications, at most, to Plan C185 because of the doctrine established in *Upham v. Seamon*, 456 U.S. 37 (1982) (*per curiam*). The state is wrong on this point for two reasons.

First, *Upham* only addresses the circumstance in which there *has* been preclearance action and a preclearance objection that is subject to a geographically tailored remedy. In that case, the Court was faced with an administrative denial of preclearance identifying Section 5 problems with only two contiguous districts in the enacted plan. *Id*. at 38. The case did not concern the circumstances present here in which there has been *no* preclearance determination at all as the

[1] The Rodriguez plaintiffs' live pleading—their First Amended Complaint—specifically alleges that implementation of Plan C185 in the absence of preclearance would violate Section 5 of the Voting Rights Act and specifically requests an injunction preventing such implementation. *Id*. ¶¶ 34, 35.d(1).

time for implementing an interim plan approached.[2] So, this Court has not been given the kind of pinpointed Section 5 guidance that led to the Court's instruction in *Upham* to defer in the interim to state policy choices in districting except where needed to remedy a Section 5 objection. There is no Section 5 objection, pinpointed or not, to which to defer in the current circumstance.

The second reason the state is wrong to seek implementation of Plan C185 as an interim plan is that the absence of preclearance at this point occurs in the context of a broad, rather than narrow or limited, concern with the voting rights *bona fides* of the state's plan. While the United States, as defendant in the D.C. Section 5 case brought by the state, does not have the final word in whether C185 should be precleared. But, the United States, in a sense, does have the first word and, likely, a very persuasive word. And the United States' position is that, under both the retrogression and purposeful discrimination prongs of current Section 5 law,[3] Plan C185 is so fundamentally flawed that the state will have to start effectively from scratch in congressional redistricting if it fails to establish proof in the D.C. Section 5 case which overcomes the flaws identified by the United States.

The United States has submitted two expert reports in the D.C. Section 5 case.[4] One is by Dr. Lisa Handley and addresses the retrogression issues raised by C185. The other is by Dr. Theodore S. Arrington and addresses the intentional discrimination issues raised by C185.[5] Dr.

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[2] Here, of course, the state has chosen to take the *judicial* preclearance route, bypassing the other available Section 5 route of administrative preclearance. So, a court rather than the Department of Justice will be the initial decision maker on the preclearance issues raised concerning Plan C185.

[3] The 2006 amendments to the Voting Rights Act added a purpose prong back into the Act.

[4] The Handley and the Arrington reports are both dated October 19, 2011. They have not yet been filed in the D.C. section 5 case but undoubtedly will be when the United States files its response to the state's summary judgment motion. The Rodriguez plaintiffs have not included the reports as specific exhibits to this filing in order to lessen redundant submissions of such items.

[5] Dr. Arrington measures intentional discrimination using the standards in *Village of Arlington Hts. v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977). Arrington Report at 3-4.

Handley concludes that C185 is retrogressive, and Dr. Arrington concludes that C185 is intentionally discriminatory.

Dr. Handley's report on the retrogression issue includes the conclusion that, taking into account actual election performance in minority districts, "it is clear that [Plan C185] is retrogressive." Handley Report at 11. She provides a key reason provided for her conclusion:

> The percentage of districts that offer minority voters the ability to elect candidates of their choice in [Plan C100] is 31.3% of the total number of 32 districts. In [Plan C185], this percentage decreases to 27.7% because the State maintains the same number of effective minority districts despite the increase in the total number of districts from 32 to 36. In addition, if [Plan C185] were to be enacted, a substantial number of Hispanics (479,704) would no longer reside in districts that provide them with the ability to elect their preferred candidates. This is particularly egregious given the gain in congressional seats is due in large part to the growth in the Hispanic population.

Id.

This analysis, if adopted by the court in the D.C. section 5 case, is not subject to immediate confinement to a single portion of the statewide congressional districting map. Remedying the identified voting rights defect is not district-specific.

Dr. Arrington's report has even more far-reaching consequences across the geographic range of the state in congressional redistricting. It concludes as follows with respect to Plan C185:

> The intent of the Republicans, who completely controlled the redistricting process, was to limit creation of minority election districts as much as possible while presenting the appearance of non-retrogression based on unreliable, misleading bright line tests based on VAP or CVAP. . . . Minority election districts are a special target because these districts are more reliably Democratic.
> . . . .
> The line drawers, operating away from public view, drew the lines with racial and political data.
> . . . .
> The proposed plan was drawn in secret, with no opportunity for minority representatives of choice to participate. . . . The Republican majorities in the House and Senate systematically eliminated any amendments to the Redistricting Committee's plan that would have increased the number of minority election districts.

Arrington Report at 66. His overarching conclusion about the state's congressional redistricting plan is that "the actual intent is to prevent any reflection of the explosive growth of Hispanic population and the relative decline in the voting strength of Anglo . . . voters since the 2000 census." *Id*. at 1.[6]

As with the Handley analysis, Dr. Arrington's analysis, if judicially adopted, means that the entire Plan C185 is infected with the problem of discriminatory intent. The more confined objection present in *Upham* would not be present in this case.

Against this backdrop, the Court should reject the state's request that Plan C185 be used as an interim plan for 2012 Texas congressional elections. Instead, it should develop and order implementation of an interim plan that addresses the constitutional and Voting Rights Act issues raised thus far in these proceedings.

II. Plan C166 and Dr. Arrington's evaluation of it

Before turning to objections to interim plans submitted by other parties, the Rodriguez plaintiffs offer the reminder that their proposed interim plan is the Dukes plan, Plan C166. They already have provided their reasons why the Court would be justified in using it as an interim plan. *See* Rodriguez Plaintiffs' Submission on Interim Court-Ordered Plan Issues (Dkt. #438).

Dr. Arrington's report in the D.C. Section 5 case was submitted shortly after the filing on the Rodriguez plaintiffs' submission proposing Plan C166 as an interim plan. The report highlights two plans that had been offered in the legislature—but rejected—as alternative plans to what

[6] Based, as it is, on the *Arlington Heights* standard, Dr. Arrington explains that he "neither claim[s] nor den[ies] that this intent is motivated by racial or ethnic animus." Arrington Report at 66.

eventually became Plan C185. One plan of those plans is Plan C166, the plan offered by the Rodriguez plaintiffs as a viable interim plan. Arrington Report at 52-54.[7]

Dr. Arrington concludes that Plan C166 demonstrates that congressional district plans could have been constructed that provides "an increased number of minority election districts." *Id*. at 53. He finds C166 more compact than C185 and better at respecting the integrity of Dallas and Tarrant Counties. *Id*. at 53-54. He also says that Plan C166 shows that additional minority districts could have been created without having to pair any incumbent members of Congress. *Id*. at 54. He finds the numbers for slit precincts very similar and the treatment of small counties about the same. *Id*.

III. Objections to interim plans proffered by other parties

A. Background to objections

Not counting either Plan C166 (Rodriguez plaintiffs) or the state's proposal that Plan C185 be used as the 2012 interim plan, six maps (two by the same person) have been proposed as statewide interim plans. They are Plans: C205 (Quesada plaintiffs); C209 & C212 (Cong. Canseco); C211 (MALC); and C213 (Latino Redistricting Task Force, or "Task Force").

Two maps covering only parts of the state also have been submitted as interim proposals. One—Plan C193 by the NAACP plaintiffs—has proposals for Harris County, for Dallas-Fort Worth, and for Central Texas. Another—a plan by Congressman Cuellar that is not publicly available on the REDAPPL system—is a proposal for CD28, in which he is the incumbent.

Each map has some element or elements to commend it to the Court for consideration in developing an interim plan, and each has its drawbacks. Each of the plans, as a whole, is superior

[7] The report misidentifies the plan as having been offered on MALC's behalf by Rep. Martinez-Fischer. As previously discussed, the plan was offered by Rep. Dukes. The other plan highlighted in the report, Plan C163, was offered on MALC's behalf by Rep. Martinez-Fischer. Its districting configuration is significantly different from the plan MALC is currently offering as its interim proposal, Plan C211. *See* Part III.B, C, E, & F, below.

to Plan C185 for use as an interim plan.[8] The Rodriguez plaintiffs, however, continue to believe Plan C166 the superior interim remedy under the standards governing adoption of interim plans.

Inasmuch as the Court's direction for this filing is that it contain "objections" to maps, this part of the filing will focus on the objections of the Rodriguez plaintiffs, which are largely to specific elements of the proposed plans. The one exception is to the Canseco plans, to which a broader objection is lodged.

The objections are grouped by geographic area. They cover Travis County (III.B), Bexar County (III.C), Harris County (III.D), Hidalgo County and the Rio Grande Valley (III.E), El Paso County (III.F), and, finally, broader, less area-specific objections (III.G).[9] These areas and the objections associated with them are taken up in the order of most detailed objections to least. The broader objections, including those to the Canseco plans, are last in the group of objections.

B. Travis County

1. Crossover district (CD25) background

The Rodriguez plaintiffs, buttressed by essentially undisputed expert testimony, have consistently taken the position that current CD25, well-anchored in Travis County, is a crossover district, using the Supreme Court's lexicon.[10] The Supreme Court has recognized the legal significance of existing crossover districts: "[I]f there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts that would raise

[8] The Canseco plans are superior to Plan C185 only insofar as they create an additional minority opportunity district in the Dallas-Fort Worth Metroplex.

[9] Unlike Plan C166 (which proposed one additional minority opportunity district in the area), some proposed plans—Plans C205, C211, C214, and C193—propose the creation of two new minority opportunity districts in the Dallas-Tarrant County area. The Rodriguez plaintiffs do not oppose these efforts in general.

[10] "[A] crossover district is one in which minority voters make up less than a majority of the voting-age population. But in a crossover district, the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority's preferred candidate." *Bartlett v. Strickland*, 129 S.Ct. 1231, 1242 (2009). A crossover district is "the result of white voters joining forces with minority voters to elect their preferred candidate." *Id*. at 1249.

serious questions under both the Fourteenth and Fifteenth Amendments." *Bartlett*, 109 S.Ct. at 1249.

Dr. Stephen Ansolabehere, who served as an expert for the Rodriguez plaintiffs in this case, also serves as an expert (for the Gonzales Defendant-Intervenors) in the D.C. Section 5 case, where he submitted an expert report on October 21, 2011.[11] He explains that "CD 25 is what Justice Kennedy termed a cross-over district in his opinion in *Bartlett v. Strickland*." Ansolabehere Section 5 Report at 30. He explained the district's significance:

> As it was configured District 25 under Plan C100 was a minority opportunity district because of high levels of White cross-over voting. Whites were the majority of the electorate under Plan C100, but Hispanics were the decisive voting group in the elections. . . .Hispanics and Blacks in Travis County voted cohesively. Also, Whites in Travis County split their votes approximately in half, with half choosing the minority-preferred candidates and half choosing their opponents. [footnote omitted] The voting behavior of Whites in Austin is fairly unusual within the state. All other major counties show White cohesion. Keeping the Austin vote together in CD 25 created unique opportunities for minorities to elect their preferred candidates with the support of White voters. The minority-preferred Congressional candidate in the general elections won handily in 2006, 2008, and 2010. Obama, the minority preferred candidate for President in 2008, won 60 percent of the vote in the area defined by CD25 under Plan C100.

Ansolabehere Section 5 Report at 35.

The state has conceded that CD25 is a crossover district: "CD25 in the benchmark plan is a crossover district." Defendants' Response to Plaintiffs' Post-Trial Briefs (DKT. #457) at 18.

It also is one of the five districts that were redrawn in 2006 by the district court on remand from *LULAC v. Perry*, 548 U.S. 399 (2006), to remedy the voting rights violations found by the Supreme Court.[12] The district court on remand specifically determined that it was drawing CD25 to make it "a compact Austin-based district." 457 F.Supp.2d at 719. In bringing the remedial

[11] *See* Report on Minority and White Representation Under the Texas Congressional District Plans C185 and C100. It is not yet filed, but will be in conjunction with a response to the state's summary judgment motion, which is due October 25, 2011.

[12] The five districts were CD23, CD25. CD28, CD 15, and 21. *LULAC v. Perry*, 457 F.Supp.2d 716 (E.D. Tex. 2006).

CD25 into a Travis County-based alignment, the district court on remand rejected a remedial proposal that would have linked south San Antonio to southeast Travis County in a district similar to Plan C185's CD35.[13]

As established by trial evidence (David Butts testimony, for example), current CD25's classification as a crossover district derives from the long-operative tri-ethnic voting coalition at work in Travis County and the City of Austin. As explained in *Bartlett*, "[t]he Voting Rights Act was passed to foster this cooperation." *Bartlett*, 129 S.Ct. at 1249.

2. Objections

The Rodriguez plaintiffs object to the two Canseco plans (C209 and C212), the MALC plan (C211), and the Task Force plan (C213), because they destroy the crossover district and eviscerate the tri-ethnic coalition that, in Texas counties anyway, is unique to Travis County.

The two Canseco plans are identical in their treatment of Travis County and the creation of a San Antonio-to-Austin district that substantially mirrors CD35 in Plan C185.[14] Both Canseco plans chop Travis County into five districts, none anchored there even though the county by itself has sufficient population to form one and a half districts on its own. The criticisms that the Rodriguez plaintiffs and others have leveled at C185's CD35 and overall dissection of Travis County and Austin apply with equal force to the Canseco plans.

Like the Canseco plans, MALC's Plan C211 is objectionable in its treatment of Travis County. It destroys the core of current CD25 and the area's tri-ethnic voting coalition.[15] It has the

[13] The judicially rejected San Antonio-to-Austin congressional district proposal was by the American GI Forum, represented by the same counsel representing the Task Force in this case. *See* GI Forum Brief in Response to Remedial Proposals (Dkt. #323) at 8, filed July 21, 2006, in *LULAC v. Perry*, No. 2:03cv354 (E.D. Tex.).

[14] CD35 in Plans C209 and C212 differs only slightly from Plan C185's CD35 in the areas outside Travis County. Inside Travis County, it is identical.

[15] The MALC Plan C163, discussed in the Arrington report discussed above as showing that additional minority opportunity districts could be created, did not target Travis County for chopping up.

related flaw that it pairs two congressional incumbents, Congressmen Doggett and McCaul, in its proposed CD25. This latter flaw is especially problematic in the context of an interim plan which is supposed to maintain a semblance of constancy where possible.

C211's carve-up of Travis County is done in part to tie together Austin and San Antonio in a district similar to C185's CD35, although C211's I-35 district is denominated CD34 rather than CD35 and it extends to the southern and western borders of Bexar County, making the district more strongly anchored in Bexar County. Two other districts in C211, numbered CD28 and CD33, complete the major part of the carve-up of Travis County minority voters and the parceling of them out to districts anchored in different communities with little in common with the Travis County voters except their race. CDs 28 and 33 are elaborately elongated creations that run directly counter to what the 2006 district court on remand tried to accomplish in its remedy, where it resisted broader, more far-reaching remedial efforts because they would "frustrate[] the correction of noncompact 'bacon strip' districts." *LULAC v. Perry*, 457 F.Supp.2d at 719. Plan C211's CD33 stretches from the Rio Grande River south of McAllen in Hidalgo County all the way to northeast Travis County, which it surgically enters to extract minority population. Plan C211's CD28 is about as unusually elongated. It runs from the Rio Grande River in Zapata County in a narrow strip to the central part of east Austin, where, like C211's CD33, it enters only to extract minority population. These two would-be districts lie like layers of a parfait on top of the similar extraction of southeast Austin minority voters to connect them with south and west Bexar County voters. CD28 would be Webb County-anchored; CD33, Hidalgo County-anchored; and CD34, Bexar County-anchored.

C211's CD25 completes the destruction of the tri-ethnic voting community of Travis County. It takes the Anglo part of that coalition, separates it from the minority community, and

links it instead with Anglo voters to the west of the county. Although anchored in Travis County, it has no remaining vestige of the tri-ethnic voting coalition that forms the heart of current CD25.

Attached as Exhibit 1 is a map of Travis County, color-shaded for minority voting age population, which shows how Plan C211 separates the county's minorities into separate districts with virtually no real link to the county, other than to take population to build districts.

The Task Force's Plan C213 also carves up the tri-ethnic voting coalition of Travis County, although not quite as drastically as Plan C185, the Canseco plans, and Plan C211. It carves the county into three pieces. Its centerpiece is the San Antonio-to-Austin I-35 district concept that counsel had unsuccessfully pressed as a remedy in 2006 to the *LULAC v. Perry* court. As with the Plan C211 effort, the C213 districts runs from southeast Austin to the southern and western county lines of Bexar County. With the other two districts it puts in Travis County, this plan also eviscerates the voting coalition that has made current CD25 a viable crossover district where the preferred candidate of minority voters receives significant enough support from the Anglo voters that the minority-preferred candidate wins. Attached as Exhibit 2 is another map of Travis County, color-shaded for minority voting age population, which shows how Plan C213 separates the county's tri-ethnic voting coalition into separate districts.

Leading members of the Hispanic community in Travis County oppose these efforts that unravel the tri-ethnic voting coalition in the county. Attached as Exhibit 3 if a Declaration from former Austin Mayor Gus Garcia, who says that Plans C211 and C213 "ignore the historical, cultural, social, and economic interests of the people of" Austin and Travis County. Garcia Decl. ¶ 2. It is his view that any new district drawn for the Austin area "should not divide the Hispanic population of Travis County so drastically from its home-town base." *Id*. As he explains it, "Predominantly Hispanic communities in South, Southeast, and North-Central Austin have long

been, and should continue to be, part of the same Congressional District based in Austin." *Id*. at 4. Eddie Rodriguez, a plaintiff in this case and a sitting state representative, also has a declaration (attached as Exhibit 4) in which he states that a redistricting plan "in Travis County that divides the minority coalition in Travis county would deny an Austin Hispanic candidate any future opportunity to be elected by the same coalitions that have elected" leading former Hispanic elected officials. Rodriguez Decl. ¶ 4. He specifically is opposed to "any redistricting plan that would detach any of our predominantly Hispanic neighborhoods from the rest of the Austin/Travis County community." *Id*. ¶ 5.

A basic problem with the approach of Plans C211 and C213 is that, as with Plan C185 and the Canseco plans, they are proposing that voting rights remedial steps be taken into an area where there has not been a voting rights problem established.[16] Creating a minority opportunity district in order to comply with Section 2 of the Voting Rights Act is legally acceptable if there is a strong basis in evidence for doing so and the remedial districting substantially addresses the voting rights violation. *Bush v. Vera*, 517 U.S. 952, 977 (1996) (case involving Texas congressional districting). It is another thing entirely to find a voting rights violation in one part of a statewide map, then remedy the violation by carving up a tri-ethnic voting coalition in another part of the state where there is no proof of a violation.

The objection of the Rodriguez plaintiffs is not to the commendable efforts of Plans C211 and C213 to create additional minority opportunity districts. It is possible to create additional minority opportunity districts in the state without dismantling a voting coalition in a county

[16] The principal map drawer for the House, Mr. Downton, testified that he doubted CD35 was required under Section 2. Tr. of Sept. 9 at 987. In a deposition of October 20, 2011, in the D.C. Section 5 case, he testified that he did not believe an additional minority opportunity district was required under Section 5 either. Downton Depo. in *Texas v.U.S.* at 19-20.

where minority voters can receive significant white voter support so that minority-preferred candidates regularly prevail.

C. Bexar County

The objections to proposed maps insofar as they affect Bexar County are principally tied to their treatment of current CD20. The incumbent in that district is Congressman Charles Gonzalez, who is the current Chair of the Congressional Hispanic Caucus. This district was the first Texas congressional district to elect an Hispanic to the United States House of Representatives and has long included many of San Antonio's major cultural, social, governmental, and economic centers. *See* Declaration of Charles A. Gonzalez (Dkt. #438-1) ¶ 5.

First of all, the Rodriguez plaintiffs object to the Canseco plans (C209 and C212) and MALC's Plan C211 because they pair two incumbents, Congressman Gonzalez and Congressman Canseco. This disruption is unnecessary and legally frowned upon in the context of interim plans. Pairing of these incumbents cannot even remotely be considered a necessity, as Plan C166, as well as other offered plans, demonstrate.[17]

The Rodriguez plaintiffs also object to the Canseco plans (C209 and C212), MALC Plan C211, and the Quesada Plan C205 insofar as they make unnecessary changes to CD20 that are retrogressive with respect to its continued functioning as a viable Hispanic opportunity district. The Quesada plan drops CD20's SSVR to 51.4% and splits the west side of the district, a key component of this historic configuration. MALC's Plan C211 also drops the SSVR for CD20 significantly, from its level of 58.1% under current Plan C100 to 52.8%. It also pulls the near west side, near downtown, out of the district and, instead, extends the district all the way to the Medina County line, a configuration not proposed by anyone during the legislative process. The

[17] The *LULAC v. Perry* remedial district court order on remand specifically took incumbency into account. *See* 457 F.Supp.2d at 721 (under court's remedial plan, "all incumbents may run in their old districts," as altered). Avoiding pairing of incumbents is a legitimate consideration in districting. *Bush v. Vera*, *supra*, 517 U.S. at 964.

two Canseco plans are identical with respect to CD20 and vary in only minor ways from the plan enacted by the legislature, whose shortcomings with respect to CD20 have already been the subject of evidence before this Court. *See, e.g.*, Declaration of Walter Wilson.

There is nothing in connection with remediation of any voting rights problems in adopting an interim map that counsels such disruptions of this core San Antonio congressional district. As Congressman Gonzalez explained in his declaration of October 17th, in addition to central features of downtown and near-downtown San Antonio (the Alamo, La Villita, Brackenridge Park, Basilica of the Little Flower), economic generators and centers of commerce and education (UTSA Downtown Campus, University of Texas Health Science Center, Lackland Air Forcce Base, and so on) have been key features of the district. Gonzalez Decl. ¶¶ 6, 9. So have socially important neighborhoods such as Prospect Hills, Tobin Hills, and Beacon Hills, as well as symbolically significant educational symbols such as Lanier and Louis Fox High Schools. *Id*.

Under Plan C100, CD20 was only overpopulated by about 13,000 people. That population can be adjusted in an interim plan—which is supposed to minimize disruption where otherwise reasonable and possible—without the major surgery that Plans C209, C212, C211, and C202 perform on it. Some of these tensions—as set up by the Canseco and MALC interim proposals—are more readily alleviated if their effort to set up an attenuated connection between south San Antonio and Austin is abandoned. As Congressman Gonzalez further explained, where it is reasonable and possible, a congressional representative should be based in San Antonio without forcing the division of that person's allegiances with another major city such as Austin. Gonzalez Dec. ¶ 10.

D. Harris County

Plan C166 creates an additional Hispanic opportunity district in Harris County. The Rodriguez plaintiffs object to the Canseco plans (C209 and C212), MALC Plan C211, and Quesada Plan C205 insofar as they fail to create such an additional district.[18]

The Task Force does propose a new Hispanic district in Harris County in its Plan C213. The Rodriguez plaintiffs object to the new CD36 configuration in the Task Force's plan. It unreasonably cuts off the north side in CD29 from downtown Houston through the device of a meandering, narrow channel (no more than a block or so wide in places) that is used to connect one part of CD18 in the plan with another part of CD18. (This is in the Aldine ISD area generally.) The two pieces of the current CD29 configuration should not be severed this way in an interim plan, but, instead, should stay connected.

E. Hidalgo County and the Rio Grande Valley

Plan C166 demonstrates that, with the reconnection of Nueces County to the Rio Grande Valley, it is relatively to create a new Hispanic opportunity district originating in Hidalgo County, where growth has been significant over the last decade. And this can be done without the unnecessary elongation of districts that it is accomplished in MALC's Plan C211.[19]

The Rodriguez plaintiffs object to the Canseco plans in their failure to create a new Valley-based Hispanic opportunity district. They also object to the Task Force's Plan C213 in that, in its determination to impose a new Hispanic opportunity district (C213's CD35) in an area (Travis County) where there is no proof that Section 2 rights are in jeopardy in connection with

[18] As previously indicated, in the event the Court is disinclined to require addition of a new Hispanic district in Harris County in an interim plan, the Rodriguez plaintiffs do *not* object to the NAACP plaintiffs' Plan C193 in its Harris County configuration of the two existing Black opportunity districts. The same position obtains with respect to Plans C211 and C205.

[19] Plan C211's CD33 is a new Hispanic opportunity district emanating from the Rio Grande Valley and Hidalgo County, but, as already addressed in Part III.B, above, it is excessively elongated into territory hundreds of miles to the north.

congressional elections, it has correspondingly failed to create an additional Hispanic opportunity district[20] emanating from the Rio Grande Valley area. The population growth and racially polarized voting patterns attendant to the Rio Grande Valley and its environs warrant a new opportunity district originating there.

F. El Paso County

Under the current plan, C100, CD16 runs south along Interstate 10 and the Mexican border with the county for much of the length of the county. The district stops short not too long before the county line with Hudspeth County. The Rodriguez plaintiffs' proposed Plan C166 has a similar configuration.[21]

The Rodriguez plaintiffs object to the Canseco plans and the Task Force's Plan C213 insofar as they stop short in their southerly extensions, eliminating the important city of Socorro from CD16. But, more strenuously by a long shot, the Rodriguez plaintiffs object to MALC Plan C211's radical redrawing of CD16, taking it completely out of its southern alignment along the international border and sending it in a relatively narrow strip along a different border (the New Mexican border) two hundred fifty miles east, into the City of Odessa in Ector County. This reorientation of the district has not footing in any districting policy adopted before by the state, and it has no apparent connection to a necessary remedy for a voting rights problem. It should be rejected as an interim proposal for the El Paso County area.

G. Other objection (C209 & C212) and comparisons

At a broader, less localized level, the Rodriguez plaintiffs object to the two Canseco interim plans because of their failure to adhere to the principle that interim plans should hew to Section 2

[20] Plan C213 does restore CD23 as an Hispanic opportunity district.

[21] This alignment is especially fitting, given the incumbent's longtime employment roots connected with United States/Mexican border issues.

requirements where reasonably possible. The Canseco plans fail to abide by Section 2 requirements, failing to create additional minority opportunity districts where it was reasonably possible to do so. Attached as Exhibit 5 is a report prepared by Dr. Stephen Ansolabehere in which he compares the Canseco plans (C209 and C212) with Plan C166 in terms of creation of minority opportunity districts. His conclusion is that, while Plan C166 contains fourteen minority opportunity districts, in which minority voters have a reasonable opportunity to elect congressional candidates of their choice notwithstanding the broad presence of racially polarized voting, Plans C209 and C212 create only eleven such districts.

In addition to the objections lodged above, the Rodriguez plaintiffs also attach for the Court's information a split-county and split-precinct comparison of the proposed statewide interim maps. It is Exhibit 6. These comparisons may aid the Court in evaluating adherence to some traditional districting principles.

This comparison shows that MALC's Plan C211 and LULAC's Plan C214 have the most split counties (40 and 45, respectively), while the others are grouped together in the low thirties range. It also shows that the two Canseco plans have far and away the most split precincts,[22] followed at a much lower level by the Quesada Plan C205. MALC Plan C211, Task Force Plan C213,[23] and the Dukes Plan C166 are grouped still lower in the number of splits, with Plan C166 having the lowest number of splits for that group. LULAC's Plan C214 has by far the lowest number of precinct splits, approaching zero.

[22] Splitting one precinct yields two split precincts. So, to determine the number of precinct splits, the number of split precincts is simply divided by half.

[23] It is labeled "MALDEF" in the exhibit.

Conclusion

The Rodriguez plaintiffs urge the Court to consider these objections to others' interim plans in connection with developing an interim plan for the 2012 congressional elections.

Respectfully submitted,

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I hereby certify that on the 24th day of October, 2011, I electronically filed the foregoing using the CM/ECF system which will send notification of such filing to all counsel of record.

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/s/ Renea Hicks
Renea Hicks

Declaration of Mayor Gus Garcia.

I, Gus Garcia, declare under penalty of perjury to the following facts, which are based on personal knowledge:

1. I, Gus Garcia, am over the age of 18, reside at 7401 Ophelia Drive, Austin, Texas 78752, and am the former Mayor of Austin, serving from November 2001 to June 2003.

2. The proposed map submitted by the Mexican American Legislative Caucus, denominated Plan C211, and the map submitted by the Texas Latino Redistricting Task Force (TLRTF), denominated Plan C213, ignore the historical, cultural, social, and economic interests of the people of the City of Austin and Travis County. Any new district drawn for the Austin area should not divide the Hispanic population of Travis County so drastically from its home-town base because it would be dilutive of the Hispanic vote in the county.

3. In C211, Travis County is divided into five separate congressional districts. In C213, the north and western portion of Travis is united through a narrow corridor going east until it leaves the county, then proceeding south to include Guadalupe and Wilson County.

4. Our Hispanic community in the Austin area is vibrant and united. Predominantly Hispanic communities in South, Southeast, and North-Central Austin have long been, and should continue to be, part of the same Congressional District based in Austin. Considering Hispanic population growth, this will enable us to have a larger voice in local affairs. Travis County is an example of how coalitions of African-Americans, Hispanics, and Anglos work together to elect their shared candidate of choice.

5. I strongly oppose any redistricting plan, like C211 and C213, that attempt to detach any of our predominantly Hispanic neighborhoods from the rest of our community into a district with substantially larger populations from other nonadjacent counties. Such a move would only reduce the opportunity for us to continue electing the Congressional candidate of our choice.

6. A redistricting plan in Travis County similar to maps C211 and C213 also would deny an Austin Hispanic candidate any future opportunity to be elected by the same coalitions that have elected former State Senator Gonzalo Barrientos, current County Attorney David Escamilla, District Clerk Amalia Rodriquez-Mendoza, County Treasurer Dolores Ortega Carter, County Court at Law Judge Carlos Barrera, and District Judges Jim Coronado, Gisela Triana-Doyal, and Orlinda Naranjo. I was elected Mayor of Austin as a result of this coalition. Plans such as C211 and C213 dilute the voice of Austin Latinos and results in a significant portion of Austin being represented by someone from San Antonio, or someone from the Rio Grande Valley, with whom they do not share a community of interest.

7. San Antonio is a tremendous asset to our State, but it is not Austin. Its elected officials should represent the people in and around Bexar County, not in our community. Part of Austin, including the State Capitol, the University of Texas , and the Travis County Courthouse, has already been forced into the congressional district of one San Antonio resident with no previous ties to Austin .

8. C211 and C213 also create a conflict of interest, as does any map that eviscerates the character of the present Congressional District 25 in Travis County. Federal investment in any congressional district is limited by available resources and attendant budgetary constraints. Whether in the form of grants, loans or policy proposals, federal initiatives inure to benefit local and private entities. A district that stretches from Austin to San Antonio, as occurs in both the C211 and C213, would require the representative to have an allegiance to a "competing" constituency located in another major city and county.

9. Neither dismantling the historical core character nor the coalition of voters that make up Congressional District 25 is necessary to achieve the creation of more minority influence

congressional districts. Indeed, the Department of Justice's expert, Dr. Theodore S. Arrington, suggests two maps that illustrate how one could construct a plan with an increased number of minority election districts, C163 and C166. The issue should not be about a political advantage for any particular political party or specific candidate. It should be about maintaining the ability of Hispanics to not only effectively elect a U. S. Representative of their choice, but ensuring that they are effectively represented.

10. I urge you to keep Austin Hispanics together in one Congressional District based in Travis County so that they may have a united voice in Congress and in our community.

I declare under penalty of perjury that the foregoing statements are true and correct.

Signature: Gustavo L. Garcia

Date: October 24, 2011

Declaration of Eddie Rodriguez

I, Eddie Rodriguez, declare under penalty of perjury to the following facts, which are based on personal knowledge:

1. I am over the age of 18, reside at 2235 E. Sixth Street, Austin, Texas 78702, and am State Representative for House District 51, and was first elected to this office in 2002.

2. Any new district drawn for the Austin area should consider the historical, cultural, social, and economic interests of the people of the City of Austin and Travis County area and should not divide the Hispanic population of Travis County so drastically from its home-town base that it would be dilutive of the Hispanic vote in the county.

3. Our Hispanic community in the Austin area is vibrant and united. Predominantly Hispanic communities in South, Southeast, and North-Central Austin have long been, and should continue to be, part of an Austin-based Congressional District. Considering Hispanic population growth, this will enable us to have a larger voice in local affairs. Travis County is an example of how coalitions of African-Americans, Hispanics, and Anglos work together to elect their shared candidate of choice.

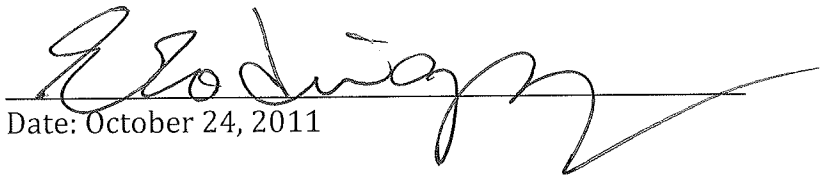
4. A redistricting plan in Travis County that divides the minority coalition in Travis county would deny an Austin Hispanic candidate any future opportunity to be elected by the same coalitions that have elected former State Senator Gonzalo Barrientos, former Mayor Gus Garcia, current County Attorney David Escamilla, District Clerk Amalia Rodriquez-Mendoza, County Treasurer Dolores Ortega Carter, County Court at Law Judge Carlos Barrera, and District Judges Jim Coronado, Gisela Triana-Doyal, and Orlinda Naranjo. I oppose any plan that dilutes the voice of Austin Latinos.

5. I oppose any redistricting plan that would detach any of our predominantly Hispanic neighborhoods from the rest of the Austin/Travis County community. Such a plan would reduce the opportunity for Austin Hispanics to elect the Congressional candidate of our choice. A plan that would pull Austin Hispanics into a Congressional District or districts located in distant communities would create "competing" constituencies.

6. A redistricting plan that would divide or dismantle the coalition of minority voters in Austin and Travis County is not necessary to achieve the creation of more minority opportunity congressional districts. Indeed, the Department of Justice's expert, Dr. Theodore S. Arrington, suggested two maps that illustrate how one could construct a plan with an increased number of minority election districts, C163 and C166. The issue should not be about a political advantage for any particular political party or specific candidate. It should be about maintaining the ability of Austin/Travis County Hispanics to not only elect a U. S. Representative of their choice, but also to ensure that they are effectively represented.

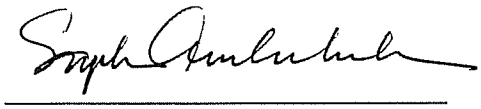
7. I urge you to keep Austin Hispanics together in one Congressional District based in Travis County so that we may have a united voice in Congress and in our community.

I declare under penalty of perjury that the foregoing statements are true and correct.



Date: October 24, 2011

Report on Electoral Performance of Minority Preferred Candidates in Plans C209 and C212, Compared with C166



Professor Stephen Ansolabehere
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October 24, 2011

I. Statement of Inquiry

I have been asked to assess the electoral performance of minority-preferred candidates under Plans C209 and C212, and to compare them with the electoral performance of minority-preferred candidates under Plan C166. In particular, I have been asked to assess how many districts and which districts are likely to elect minority-preferred candidates under the Congressional Districts in each of these plans.

II. Background and Qualifications

I am Professor of Government at Harvard University. I received my B. A. and B. S. from the University of Minnesota, and my PhD from Harvard University. I have previously taught at UCLA and at MIT, and am currently a visiting professor of law at NYU Law School. I teach general courses on American government, and on electoral politics, election law, and on statistical methods in social science research. My expertise lies in U. S. elections and representation, and on statistical analysis of electoral and census data. I have published extensively on these topics, including four books and numerous articles in peer-reviewed academic journals in Political Science, Economics, and Statistics, as well as in the law journals.

Earlier reports that I have filed in conjunction with Perez v. Perry contain fuller descriptions of my background and expertise. I refer the reader to Table 4 in Stephen Ansolabehere, "Report on Minority and White Representation and Voting Patterns Under Congressional District Plan C185," in the case of *Perez v. Perry*, No. 5:11-CV-00360-OLGJES-XR (W.D. TEX.), Docket Number 123, Exhibit 1.

III. Information and Sources

Information used in this report comes from two sources, the Texas Legislative Council and NCEC. The Texas Legislative Council provides information on the geographic location of districts, their racial composition of districts. I accessed their data and reports through http://www.tlc.state.tx.us/redist/redist.html. NCEC provided me with electoral statistics at the district level.

IV. Analysis and Findings

Based on election returns from 2008 and 2010, I conclude that Plans C209 and C212 each create 11 districts in which minorities have a reasonable opportunity to elect their candidates of choice. These are Congressional Districts 9, 15, 16, 18, 20, 27, 28, 29, 30, 33, and 35.

This conclusion is based primarily on the electoral performance of minority-preferred candidates in statewide and federal elections in the Voting Tabulation

Districts included in each district in each of these plans. To determine which candidate is the preferred candidate in each district, I first ran ecological regressions to determine which candidate was the preferred candidate in each district in each election. I then examined the share of the vote received by that candidate in each district. [1] Results for one such election are provided in Table 1. Table 1 shows the vote for Barack Obama for President in 2008 in the Congressional Districts defined by Plans C209, C212, and C166. Obama was the preferred candidate of minority voters in this election. I also examined the vote for 2010 for Governor and the vote for U. S. Congress in 2010 and 2008 for these districts. All elections show that the minority preferred candidate receives a majority of the vote in each of the elections in districts 9, 15, 16, 18, 20, 27, 28, 29, 30, 33, and 35.

In addition to electoral performance, I examine racial composition of the districts. Hispanics are a majority of the Voting Age Population in districts 15, 16, 20, 27, 28, 29, 33, and 35 under both Plan C209 and Plan C212. Hispanics are the majority of the Voting Age Population in district 23, but the Hispanic preferred candidate won a majority of votes in only one of the five elections examined. That election was the 2008 U. S. House election.

Blacks are the majority of the Voting Age Population in none of the districts in Plans C209 or C212. They are pluralities in CDs 9, 18, and 30 under both of the plans. They must, therefore, rely on voting behavior and turnout of Hispanics and whites to win elect their candidates of choice in these districts. These districts show among the highest support for minority-preferred candidates.

Plan C166 offers a comparison with Plans C209 and C212. Based on election returns from 2008 and 2010, I conclude that Plan C166 creates 14 districts in which minorities have a reasonable opportunity to elect their candidates of choice. These are Congressional Districts 9, 15, 16, 18, 20, 23, 25, 27, 28, 29, 30, 33, 35, and 36. In other words, Plan C166 has 3 more districts than Plans C209 and C212 do in which Hispanics and Blacks have an opportunity to elect their candidates of choice.

Hispanics are the majority of Voting Age Population in districts 15, 16, 20, 23, 27, 28, 29, 33, 35, and 36 under Plan C166. Blacks are the plurality of Voting Age Population in districts 9, 18, and 30. District 25 is a plurality White district in Voting Age Population, but in the area covered by District 25 (a large portion of Travis County) Whites split their votes roughly evenly between minority-preferred candidates and White-preferred candidates. This high level of cross-over voting

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[1] For further details see Stephen Ansolabehere "Report on Minority and White Representation Under the Texas Congressional District Plans C185 and C100," October 21, 2011, in State of Texas v. United States, especially pages 31-35, and see Table 4 in Stephen Ansolabehere, "Report on Minority and White Representation and Voting Patterns Under Congressional District Plan C185," in the case of *Perez v. Perry*, No. 5:11-CV-00360-OLGJES-XR (W.D. TEX.), Docket Number 123, Exhibit 1.

creates the opportunity for minorities to elect their candidates of choice. This is what Justice Kennedy termed a cross-over district in *Bartlett v. Strickland*.

Other comparison plans are available, and they show similar discrepancies. All told, these comparison plans suggest that it is possible to create 14 to 15 districts in Texas in which minorities have a reasonable opportunity to elect their candidates of choice. This is substantially more than under Plans C209 or C212 or C185.[2]

[2] For analysis of C185 on this score see Stephen Ansolabehere "Report on Minority and White Representation Under the Texas Congressional District Plans C185 and C100," October 21, 2011, in State of Texas v. United States.

Table. 1. Vote for Minority Preferred Candidate in Each District Under Plans C209, C212, and C166 (2008 Presidential Election Results)

DISTRICT	C209	C212	C166
1	30.7%	30.7%	30.7%
2	36.2%	36.2%	26.9%
3	37.8%	37.8%	37.1%
4	29.6%	29.6%	29.6%
5	37.7%	37.7%	36.6%
6	44.3%	37.3%	40.1%
7	39.4%	39.4%	35.3%
8	26.4%	26.4%	27.1%
9	76.9%	76.9%	70.1%
10	43.1%	43.1%	42.0%
11	23.4%	23.4%	23.3%
12	41.4%	41.4%	48.7%
13	22.4%	22.4%	22.4%
14	42.3%	42.3%	42.7%
15	57.8%	57.8%	58.0%
16	65.1%	65.1%	67.3%
17	41.4%	41.4%	35.9%
18	80.0%	80.0%	73.7%
19	28.2%	28.2%	28.2%
20	59.8%	59.8%	64.8%
21	42.8%	42.8%	30.0%
22	37.9%	37.9%	36.0%
23	48.3%	48.3%	51.8%
24	41.0%	41.0%	37.3%
25	39.7%	43.3%	72.5%
26	35.1%	35.1%	34.2%
27	61.7%	61.7%	56.9%
28	64.4%	64.4%	55.9%
29	65.1%	65.1%	60.1%
30	79.2%	79.2%	75.5%
31	43.3%	43.3%	43.3%
32	44.3%	44.3%	44.9%
33	69.1%	69.1%	53.3%
34	36.2%	39.7%	38.8%
35	60.5%	60.5%	66.8%
36	29.9%	29.9%	54.8%

District Plan	Split Counties	Split County - No pop	Split Precincts	Split Precinct - No Pop
C209 (Canseco A)	32	1	556	122
C211 (MALC)	40	1	286	48
C212 (Canseco B)	31	1	552	122
C213 (MALDEF)	30	3	294	73
C166 (Dukes)	32	3	268	61
C205 (Quesada)	33	1	327	79
C214 (LULAC)	45	0	4	4