

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.

Civil Action No.

SA-11-CA-360-OLG-JES-XR

[Lead Case]

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

Plaintiffs,

- and -

HONARABLE HENRY CUELLAR, et al.,

Plaintiff Intervenors,

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, et al.,

Defendants,

Civil Action No.

SA-11-CA-490-OLG-JES-XR

[Consolidated case]

MARAGARITA V. QUESADA, et al.,

Plaintiffs,

v.

RICK PERRY, et al.,

Defendants,

Civil Action No.

SA-11-CA-593-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]

EDDIE RODRIGUEZ, et al.,

Plaintiff,

v.

STATE OF TEXAS, et al.,

Defendants.

Civil Action No.

SA-11-CA-635-OLG-JES-XR

[Consolidated case]

THE HONORABLE FRANCISCO “QUICO” CANSECO’S ADVISORY TO THE COURT REGARDING PROPOSED INTERIM REDISTRICTING PLAN C220

The Honorable Francisco “Quico” Canseco (“Congressman Canseco”) respectfully files these objections in response to the Court’s Order of November 23, 2011 (Doc. 526) regarding the implementation of Plan C220 (the “Proposed Interim Plan”) as the proposed interim plan for the districts used to elect members in 2012 to the United States House of Representatives. To assist the Court in remedying these objections, Congressman Canseco has submitted “Cong. Canseco C220 Remedy Demo Plan” and states as follows:

I. The Court Must Defer To The Benchmark Plan When Altering Contested Districts.

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). Indeed, the Supreme Court has prohibited lower courts from disregarding the legislature’s intention as expressed in an enacted redistricting plan, unless it is necessary to avoid a constitutional or statutory violation:

Whenever a district court is faced with entering an interim reapportionment order that will allow elections to go forward it is faced with the problem of “reconciling the requirements of the Constitution with the goals of state political policy.” . . . An appropriate reconciliation of these two goals can only be reached if the district court’s modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect. Thus, in the absence of a finding that the . . . reapportionment plan offended either the Constitution or the Voting Rights Act, the District Court was not free, and certainly was not required, to disregard the political program of the Texas State Legislature.

Upham v. Seamon, 456 U.S. 37, 43 (1982) (per curiam) (quoting *Connor v. Finch*, 431 U.S. 407, 414 (1977)); cf. *White v. Weiser*, 412 U.S. 783, 797 (1973) (holding that the district court erred because “in choosing between two possible court-ordered plans, it failed to choose that plan which most closely approximated the state proposed plan”). In other words, when a federal court

is forced to order an interim redistricting plan, it must respect the State Legislature's considered judgments whenever possible.

While a majority of this Court may sharply disagree with the State of Texas as to how much deference should be given to Plan C185 (the "State's Plan") when altering contested districts, including Congressional District 23, the Court has at least acknowledged that it must defer to Plan C100 (the "Benchmark Plan") to "embrace[] the neutral districting principles required of court-drawn plans." *See* November 23, 2011 Order at 6-7 (Doc. 528) ("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. 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."). Similarly, the Court stated that its "primary goal in crafting the map [used to elect members in 2012 to the Texas House of Representatives] was to preserve the status quo as much as possible." *Id.* at 4.

Despite the requirement that the Court defer to the Benchmark Plan when altering contested districts—a constraint espoused by a majority of the court less than 48 hours ago—the Proposed Interim Plan violates this principle with respect to Congressional District 23 in two key respects:

- (1) The Proposed Interim Plan unnecessarily swaps Anglos (primarily) in northwest Bexar County who have historically been a part of CD 23 for Anglos (primarily) in west-central San Antonio who have historically been a part of CD 20.
- (2) The Proposed Interim Plan unnecessarily splits the City of El Paso between CD 16 and CD 23. In contrast, the City of El Paso was wholly contained within CD 16 in the Benchmark Plan.

II. The Proposed Interim Plan Unnecessarily Swaps Anglos In Northwest Bexar County For Anglos In West-Central San Antonio.

In the Benchmark Plan, the area north of Loop 1604 between Highway 16 and Highway 281 in Bexar County is in CD 23, whereas the area of west-central San Antonio east of Loop 1604 and south of Highway 16 is in CD 20. Congressman Canseco recognizes that the population growth in the State of Texas over the past decade requires the Court to reduce the number of Bexar County residents in CD 23 as compared to the Benchmark Plan; however, the Court did not defer to the Benchmark Plan and simply carve out the excess population necessary to accommodate such growth.¹ Rather, the Court has unjustifiably shifted the lines of CD 23 to swap Republican-leaning Anglo voters in northwest Bexar County for Democrat-leaning Anglo voters in west-central San Antonio.

Neither the Constitution nor the Voting Rights Act requires the Court to swap Republican-leaning Anglo voters for Democrat-leaning Anglos. Yet, the Proposed Interim Plan eliminates a core constituency from CD 23 (and another from CD 20) and severs a large number of citizens' historical ties to their current congressional district for no *legal* gain. Since the Court has violated its own requirement that it defer to the Benchmark Plan without any apparent legal reasoning or necessity—and has radically altered the Texas political landscape in the process—Congressman Canseco respectfully urges the Court to return northwest Bexar County and west-central San Antonio to their original configuration in the Benchmark Plan as much as legally possible. The Court should refer to “Cong. Canseco C220 Remedy Demo Plan” for an explicit demonstration of this correction to the Proposed Interim Plan.

¹ In order to accommodate moving northwest Bexar County from CD 21 back to CD 23 and moving west-central San Antonio from CD 23 back to CD 20, the Court can simply move the most northern tip of CD 20 as it is drawn in the Proposed Interim Plan to CD 21 without creating additional Voting Rights Act issues.

III. The Proposed Interim Plan Unnecessarily Deviates From The Benchmark Plan In El Paso County and Splits the City of El Paso.

In the Benchmark Plan, 100% of the City of El Paso and 95% of El Paso County is in CD 16, and the remaining 5% of El Paso County is in CD 23. While the population growth in El Paso County over the past decade requires the Court to move approximately 8% of El Paso County from CD 16 to CD 23, the Court could have accommodated this population growth in CD 23 by (1) maintaining the 5% of El Paso County that is currently in the district; and (2) simply carving out the additional 8% from CD 16 without severely encroaching on the City of El Paso.

Rather than utilizing a simple draw that closely adheres to the boundaries in the Benchmark Plan, the Proposed Interim Plan unnecessarily splits the City of El Paso between CD 16 and CD 23. The Proposed Interim Plan not only subverts the “primary goal” espoused by a majority of the Court less than 48 hours ago, it unjustifiably severs a larger number of citizens’ historical ties to their current congressional district than is necessary to comply with the Constitution and the Voting Rights Act. Congressman Canseco respectfully urges the Court to return CD 16 and CD 23 to their original configuration in the Benchmark Plan as much as legally possible. The Court should refer to “Cong. Canseco C220 Remedy Demo Plan” for an explicit demonstration of this correction to the Proposed Interim Plan.

IV. Conclusion

While a majority of the Court may reject the State of Texas’ argument that it must defer to the State’s Plan when altering contested districts, including CD 23, the Court must acknowledge that it lacks constitutional authority to interfere with the expressed will of the State Legislature unless it is compelled to remedy a specific, identifiable violation of law. At the very

CERTIFICATE OF SERVICE

I hereby certify that, on November 25, 2011, I electronically filed the foregoing a true and correct copy of the foregoing with the Clerk of the Court's using the CM/ECF system, which sent notification of such filing to counsel of record in this action.

/s/ Chris K. Gober

Chris K. Gober