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

SHANNON PEREZ, HAROLD DUTTON, JR. AND GREGORY TAMEZ,	)	
Plaintiffs,	)	
and	)	
TEXAS STATE CONFERENCE OF NAACP BRANCHES, HOWARD JEFFERSON, JUANITA WALLACE, and REV. BILL LAWSON	)	
Proposed Plaintiff-Intervenors,	)	
v.	)	**CIVIL NO. SA-11-CV-360-OLG-JES-XR**
STATE OF TEXAS, ET AL.,	)	
Defendants.	)	
MEXICAN AMERICAN LEGISLATIVE CAUCUS,	)	
v.	)	**CIVIL NO. SA-11-CV-361-OLG-JES-XR**
STATE OF TEXAS, ET AL.	)	
TEXAS LATINO REDISTRICTING TASK FORCE	)	
v.	)	**CIVIL No. SA-11-CV-490-OLG-JES-XR**
RICK PERRY	)	

MOTION TO INTERVENE OF THE TEXAS STATE CONFERENCE OF NAACP BRANCHES, HOWARD JEFFERSON, JUANITA WALLACE, AND REV. BILL LAWSON

Proposed Plaintiff-Intervenors are an organization comprising African American and non-African American citizens of Texas and three of its members, registered voters in the State of

Texas. The Plaintiff-Intervenors' case challenges the redistricting of United State House of Representatives, State House of Representatives, and State Board of Education of Texas.

The Texas State Conference of NAACP Branches (hereinafter "Texas-NAACP") and certain individually named members of the NAACP (hereinafter, "Individual Intervenors") seek intervention to protect their interests, and that of all African-American voters in Texas, and to ensure that the Texas redistricting process is fair and consistent with the Constitutional and statutory protections applying equally to African-American voters of Texas.

The Texas-NAACP and Individual Intervenors motion for intervention meets all the prerequisites for intervention as a matter of right: the request for intervention is timely; the rights at stake are directly implicated by claims of the Plaintiffs; and, unless it is part of this action, the Texas-NAACP and Individual Intervenors cannot effectively protect their fundamental right to ensure a fair and unbiased redistricting process and outcome for African-American voters of Texas.

FACTUAL BACKGROUND

A. The Texas-NAACP

The Texas-NAACP is the oldest and one of the largest, most significant organizations promoting and protecting the civil rights of African-Americans in Texas. It is a non-profit membership organization with over sixty branches across the state and members in almost every county of Texas. Since its inception, the organization has been involved in numerous voting rights and redistricting cases in the state. In cases involving state-wide redistricting plans, the Texas-NAACP has proposed remedies, such as redistricting plans and maps that have been adopted by the courts. The Texas-NAACP, its branches, and its members have also presented

testimony to legislative bodies on various state and local election schemes and redistricting plans.

The Texas-NAACP represents segments of African-American communities from the entire State of Texas which are not currently represented and should be considered by the court for a complete and necessary understanding of the effects of the redistricting plan passed by the Texas Legislature.

B. Individual Intervenors

Plaintiff Howard Jefferson resides at 4402 Nenana Drive, Houston TX, 77035. A resident of Harris County, he is a member of the Texas State Conference of NAACP Branches and is a registered voter. He lives in State Senator Rodney Ellis' current senate district (State Senate District 13) and will remain in State Senate District 13 in the state's proposed state senate redistricting plan.

Plaintiff Juanita Wallace resides at 1409 S. Lamar Street, Loft 341, Dallas TX, 75215. A resident of Dallas County, she is the President of the Dallas Branch of the NAACP and is a registered voter. She lives in current Congressional District 30, current State Senate District 23, and current State House District 100. Under the state's new redistricting plans, she will be in Congressional District 30, State Senate District 23, and State House District 100.

Plaintiff Rev. Bill Lawson resides at 4042 Glen Code Drive, Houston TX, 77021. A resident of Harris County, he is a member of the NAACP and a registered voter. He is Pastor Emeritus of Wheeler Avenue Baptist Church, and both a long-time civil rights leader and an advocate for the indigent and homeless in Houston. He lives in current Congressional District 18, current State Senate District 13, and current State House District 147. Under the state's new

redistricting plans, he will be in Congressional District 18, State Senate District 13, and State House District 147.

C. Defendants

Defendant State of Texas is a political subdivision covered under the provisions of the Voting Rights Act, 42 U.S.C. §§ 1973–1973aa-6, and responsible for the actions of its officials with regard to state-wide redistricting.

Defendant Rick Perry is the duly elected and acting Governor of the State of Texas. Under Article IV, Section 1, of the Texas Constitution, he is the chief executive officer of the Defendant State of Texas. He is sued in his official capacity.

Defendant David Dewhurst is the duly elected and acting Lieutenant Governor of Texas. Under Article IV, Section 16, of the Texas Constitution, he is the President of the Texas Senate. He is sued in his official capacity.

Defendant Joe Straus is the duly elected and acting Speaker of the Texas House of Representatives and is the presiding officer over the Texas House of Representatives. He is sued in his official capacity.

Defendant Hope Andrade is the duly appointed and acting Secretary of State of Texas. She is sued in her official capacity.

D. Procedural Posture

Plaintiffs Shannon Perez, Harold Dutton, Jr., and Gregory Tamez filed their action on May 9, 2011. Plaintiff Mexican American Legislative Caucus filed their action on May 9, 2011. Plaintiffs Texas Latino Redistricting Task Force, et al., filed their action on June 17, 2011. On July 6, 2011, District Court Judge Orlando L. Garcia ordered that the three cases be consolidated

under the lead case, *Perez, et al., v. State of Texas, et al.*, Civil Action No. SA-11-CA-360-OLG-JES-XR. No significant discovery has occurred, and no substantive hearings have been held.

E. Potential Impact of this Litigation

Historically, courts have regularly found that redistricting plans in Texas have discriminated against African-American voters. *See, e.g., White v. Register*, 412 U.S. 755, 766-67 (1973) (affirming findings by the district court that African-American voters in Dallas County had been "'effectively excluded from participation in the Democratic primary selection process'") (quoting *Graves v. Barnes*, 343 F.Supp. 704, 726 (W.D.Tex. 1972)); *Rollins v. Fort Bend Indep. Sch. Dist.*, 89 F.3d 1205, 1214 (5th Cir. 1996) ("The parties cannot and do not dispute that FBISD's history is blemished by past racial discrimination."); *LULAC v. N. E. Indep. Sch. Dist.*, 903 F. Supp. 1071 (W.D. Tex. 1995). If permitted to intervene, Texas-NAACP and Individual Intervenors will demonstrate that current redistricting plans passed by the Texas Legislature will dilute and diminish the impact of African-American voters on election outcomes.

ARGUMENT

I. Intervention Is Proper as a Matter of Right

Texas-NAACP and its individually named members who file this Motion to Intervene request intervention as a matter of right under Federal Rules of Civil Procedure 24(a). Intervention as of right should be granted when the following four requirements are met:

> (1) the motion to intervene is timely; (2) the potential intervener asserts an interest that is related to the property or transaction that forms the basis of the controversy in the case into which she seeks to intervene; (3) the disposition of that case may impair or impede the potential intervener's ability to protect her interest; and (4) the existing parties do not adequately represent the potential intervenor's interest.

Doe #1 v. Glickman, 256 F.3d 371, 375 (5th Cir. 2001) (citations omitted). Intervention should be liberally granted as "'[f]ederal courts should allow intervention where no one would be hurt and the greater justice could be attained.'" *Id.* at 375 (quoting *Sierra Club v. Espy,* 18 F.3d 1202, 1205 (5th Cir. 1994). Thus, "intervention of right must be measured by a practical rather than technical yardstick." *Edwards v. City of Houston*, 78 F.3d 983, 999 (5th Cir. 1996).

A. The Intervention is Timely

Intervention is timely because the Texas-NAACP and Individual Intervenors acted swiftly and with all practicable speed upon learning that Plaintiffs had filed the present action. Up to this point, no significant discovery has occurred and no substantive hearings have been held.

Timeliness is a flexible requirement that differs from case to case. *See McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. 1970). In addition, the Fifth Circuit has outlined the four factors that address the timeliness of a motion to intervene:

> (1) how long the potential intervener knew or reasonably should have known of her stake in the case into which she seeks to intervene; (2) the prejudice, if any, the existing parties may suffer because the potential intervener failed to intervene when she knew or reasonably should have known of her stake in that case; (3) the prejudice, if any, the potential intervener may suffer if the court does not let her intervene; and (4) any unusual circumstances that weigh in favor of or against a finding of timeliness.

Doe #1, 256 F.3d at 376. As this motion to intervene has been filed only 11 days after the amended scheduling order, it is clear that Texas-NAACP and Individual Intervenors meet the timeliness requirement.

1. Texas- NAACP and Individual Intervenors Prepared and Filed Their Intervention Motion Well Before Any Substantive Consideration by the Court or Significant Discovery Had Been Undertaken.

Upon receiving notice of the action, Texas-NAACP initiated steps to review the pleadings, conferred with the attorneys for Plaintiffs, and met the requirements established by

Texas-NAACP Constitution to seek intervention. Under these facts and the facts of the case, Texas-NAACP's motion to intervene is timely.

2. Intervention Will Not Prejudice the Plaintiff.

Plaintiffs will not suffer any prejudice as a result of the request of the Texas-NAACP and Individual Intervenors for intervention. The lawsuits have only been recently filed. No significant discovery has been completed and no substantive hearings have been held. The case remains near its inception. Attorneys for Plaintiffs MALC and Perez have authorized proposed Plaintiff-Intervenors to inform the court that they do not oppose this intervention.

3. NAACP Will Suffer Significant Prejudice if Intervention is Denied.

Texas-NAACP and its many members will suffer substantial and significant harm if intervention is not granted. The allegations in Plaintiff's complaint directly implicate the rights of African-American voters. If the present redistricting plan put forth by the Texas Legislature is implemented, the voting power of African-Americans in Texas could be significantly diluted. The impact of the districting plan is vast as it encompasses the election of members of the Texas Legislature and the Members of Congress. Although the Texas-NAACP affirms the good faith of current Plaintiffs, the Texas-NAACP and Individual Intervenors represent interests distinct from Plaintiffs—that is, they represent the interests of African-American voters. Unless intervention is granted, the Texas-NAACP and Individual Intervenors will be significantly limited in their ability and opportunity to ensure that the redistricting process and its results address the needs and rights of African-American voters.

4. No Unusual Circumstances Exist that Would Militate Against Intervention.

Texas-NAACP and Individual Intervenors are unaware of any circumstances that would operate against its intervention.

B. The NAACP Intervenors Have Substantial and Legally Protected Interests in the Case That It Cannot Protect Without Intervention and Is Inadequately Protected by the Named Plaintiffs.

Texas-NAACP and Individual Intervenors are African-American voters who have a significant and legally protected interest that is implicated in the present action. The Voting Right Act was passed primarily to prohibit discrimination against African-Americans in voting. 42 U.S.C. §§ 1973 *et seq*. Courts have historically and continue to recognize that redistricting schemes have been drawn so as to inhibit and dilute the voting strength of African-Americans. *See, e.g., White v. Register*, 412 U.S. 755 (1973); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *LULAC v. N. E. Indep. Sch. Dist.*, 903 F. Supp. 1071 (W.D. Tex. 1995). . The history of litigation surrounding redistricting plans in Texas has shown that the State of Texas has violated Section 2 of the Federal Voting Rights Act and the Fourteenth Amendment to the US Constitution. *See e.g., LULAC v. Perry*, 548 U.S. 399 (2006); *White v. Register*, 412 U.S. 755 (1973); *Nixon v. Herndon*, 273 U.S. 536 (1927)

Texas-NAACP and Individual Intervenors can only effectively protect these rights if granted intervention. None of the current parties will seek fair representation of African-American voters as a necessary component to any remedy, and none of the current parties is seeking to have rough proportionality of African-American representation. Intervention is the only mechanism in this instance that will allow Texas-NAACP to effectively represent the interests of its members, African-American voters and other people of color.

II. Alternatively, Texas-NAACP and Texas-NAACP Intervenors Should Be Allowed to Permissively Intervene.

Alternatively, the Texas-NAACP and Individual Intervenors should be allowed to intervene permissively pursuant to Fed. R. Civ. P. 24(b). Permissive intervention is a matter of

discretion for the court, and is appropriate when the intervention is timely, the intervenor's "claim or defense and the main action have a question of law or fact in common" and granting the intervention will not unduly delay or prejudice the original parties in the case. Fed. R. Civ. P. 24(b)(2). As previously discussed, the Texas-NAACP's and Individual Intervenors' Motion for Intervention is timely. There are common questions of law and fact between the claims of Plaintiff and Texas-NAACP Intervenors. These include whether the Congressional, Texas State House, and Texas State Senate redistricting plans passed by the Texas Legislature violate the Fourteenth Amendment to the United States Constitution and Section 2 of the Voting Rights Act. Thus, as an alternative ground, allowing the Texas-NAACP Intervenors to intervene permissively is appropriate.

PRAYER

Based upon the foregoing, Plaintiff-Intervenors requests the court grant their motion as of right or permissively, and order the district court to file the attached complaint as a matter of record in this case and such other further relief as the court determines justice and equity so require.

Respectfully Submitted,

/s/ Gary Bledsoe

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2011 a true and correct copy of the Motion to Intervene of the Texas State Conference of NAACP Branches, Howard Jefferson, Juanita Wallace, and Rev. Bill Lawson was delivered to Plaintiffs and Defendants via the United States District Court, Western Division of Texas, San Antonio Division, ECF system.

/s/ Gary Bledsoe

CERTIFICATE OF CONFERENCE

I hereby certify that the movant have complied with the conference requirements of Western District of Texas, Local Rule 7(h). On July 18, 2011, counsel for movant conferred with Jose Garza, attorney for MALC, who informed the undersigned counsel for movant that the motion is not opposed. On July 19, counsel for movant conferred with David Richards, counsel for Perez plaintiffs, who informed the undersigned counsel for movant that the motion is not opposed. On July 19, counsel for movant conferred with Defendants' counsel in the Attorney General's Office, who informed the undersigned counsel for movant that the motion is not opposed. On July 19, counsel for movant left a message for Nina Perales, counsel for Texas Latino Redistricting Task Force plaintiffs, but undersigned counsel received no response.

/s/ Gary Bledsoe
Gary Bledsoe