

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

SHANNON PEREZ, <i>et al.</i> ,)	
)	CIVIL ACTION NO.
<i>Plaintiffs</i> ,)	SA-11-CA-360-OLG-JES-XR
)	
v.)	
)	
STATE OF TEXAS, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

NAACP PLAINTIFFS’ ADVISORY TO THE COURT

The Texas NAACP Plaintiffs, pursuant to this Court’s order on April 5, 2017 (ECF No 1352), submit the following advisory to the Court:

I. Background

Private plaintiffs initially filed suit or intervened in existing cases challenging the 2011 redistricting plans in May through June of 2011—nearly six years ago. Plaintiffs amended their complaints to add claims against the 2013 Congressional and State House plan in September of 2013—nearly four years ago. This Court’s rulings on March 10, 2017, and April 20, 2017, confirmed that millions of Texans have now been forced to elect their representatives to Congress and the Texas State House of Representatives under illegal and unconstitutional redistricting plans. Elections have been conducted under district lines that segregate by race, and district lines that discriminate and minimize political power on the basis of race, in 2012, 2014 and 2016: that is, three out of the five general elections before the 2020 Census. The NAACP Plaintiffs do have pending claims against the 2013 Congressional and State House redistricting plans, and will of course be as accommodating as possible to ensure those claims are resolved

fully and quickly. However, the NAACP Plaintiffs, along with other private plaintiffs, have a motion for permanent injunction pending, and believe that entry of injunction and a remedial plan based on the Court's already-issued rulings is the best initial route to ensuring that Texas voters are not subject to one more unconstitutional election cycle.

II. Timing for Next Steps

The NAACP takes the position that ensuring that the constitutional and statutory flaws this Court has already identified, and that this Court has recognized persist in the 2013 Congressional and State House redistricting plans—many times completely unchanged—warrant an entry of an immediate injunction and prompt development of a remedial plan. While the Court rightfully desired, earlier on this litigation, to resolve all liability questions before moving on to remedial proceedings, ECF No. 1018 (May 29, 2014), the proximity of the 2018 elections and the intentional discrimination findings already made by this Court warrant reconsideration of that goal. Indeed, several advantages, both from the perspective of voters' rights and judicial resources, flow from having a remedial hearing first before proceeding to trial on the 2013 claims. The NAACP Plaintiffs would ideally like such a remedial proceeding to be conducted in late June or early July, with a full trial to follow later this summer or early fall.

First, the development of remedial plans could significantly narrow the evidence needed in the trial on the 2013 plans, saving the parties and the Court resources and time. For example, in the Congressional case, the 2013 map made no changes or corrections to Travis County. If the parties knew what the appropriate remedy for the division of voters by race in Travis County, they could, perhaps, avoid putting on any additional evidence with respect to the Travis County portion of the 2013 plan. Likewise, as another example, the Court has ruled that State House district lines in Bell County were drawn in 2011 to intentionally dilute the voting strength of

minority voters. The district lines were unchanged in the 2013 map. These are just a few examples. Thus, following the law of case, this Court simply needs to determine the proper remedy for the identified violations and that those violations persist un-remedied in 2013, and no further findings are necessary. Depending on what the proper remedy for that unconstitutional discrimination is, Plaintiffs may be able to narrow the amount of Section 2 effects evidence they would present at trial. Thus, having a satisfactory remedial map in place can help the parties narrow their cases for trial.

Importantly, conducting an immediate remedial process before moving on to final resolution is perhaps the only action that will ensure that voters are not forced to vote in unconstitutional districts in 2018. The first steps in the 2018 election process begin early this fall with the selection of precinct officials. Compressing election deadlines, while within this Court's power and sometimes necessary, is not ideal, either for election administrators or voters. As discussed below, the trial on the 2013 claims will require the development of additional fact and expert evidence, and the Court will need time to sort through that evidence before making a final adjudication.

Finally, the remedial process the NAACP Plaintiffs propose could be much more streamlined than a full trial on the 2013 maps. NAACP Plaintiffs believe that limited expert testimony would suffice to (1) explain demonstrative remedial maps to the court and (2) explain to the Court the parties' positions on what it would take to fully remedy the unconstitutional or illegal elements of the 2011 plans that persist into the 2013 plans, and thus must be changed. The Court would not have consider all the evidence supporting Section 2 effects and intentional discrimination claims against the 2013 plans, but simply make findings on where the 2011 flaws persist in the 2013 plans and what fully remedying them requires. In short, such a remedial

hearing could perhaps be conducted in as few as two days, whereas, as described below, the NAACP Plaintiffs would have a substantial number of claims, and relating evidence, that would need to be covered in a full 2013 trial, and they are only one of the plaintiff parties.

III. Claims Being Pursued with Regard to the 2013 Plans

When the cases on the 2013 Congressional and State House Plans are tried, these are the claims that the NAACP Plaintiffs intend to pursue at trial, and some overview of the types of evidence they anticipate presenting.

a. Claims that Will Still Be Pursued at Trial

i. 2013 Congressional Plan

- Intentional Discrimination in the entire plan, in violation of the Fourteenth Amendment and the Voting Rights Act
- The Dallas-Fort Worth Region
 - Vote dilution under the “effects test” of Section 2 of the Voting Rights Act
 - An additional Latino or coalition district in the region can be drawn while still be maintaining the ability of black voters to elect their candidate of choice in CD 30 and CD 33
 - Such a district would encompass a reasonably compact minority population
 - Voting in the region is racially polarized, and black and Latino voters are politically cohesive
 - The totality of circumstances warrant the creation of an additional minority opportunity district in the region
 - Packing of CD 30 in Dallas County in violation of the Fourteenth Amendment

- Intentional vote dilution and racial gerrymandering in violation of the Fourteenth Amendment and the Voting Rights Act
- While the creation of CD33 in C235 was a step toward remedying the intentional discrimination and racial gerrymandering in the DFW area, it is not a sufficient remedy. It does not unpack CD 30 completely, and it does not remedy the fracturing of Latino voters in the region.
- Travis County
 - Intentional racial discrimination in violation of the Fourteenth Amendment and the Voting Rights Act through the cracking of Black and Latino voters in Austin
 - Specifically, this intentional fragmenting of voters of color from each other constitutes intentional vote dilution and racially gerrymandering
 - C235 makes no changes in this region, and thus cannot provide any remedy to the constitutional violation found by the Court
- Harris County
 - Vote dilution under the “effects test” of Section 2 of the Voting Rights Act
 - An additional Latino or coalition district in the region can be drawn while still be maintaining the ability of black voters to elect their candidate of choice in CD 9 and CD 18
 - Such a district would encompass a reasonably compact minority population
 - Voting in the region is racially polarized, and black and Latino voters are politically cohesive

- The totality of circumstances warrant the creation of an additional minority opportunity district in the region

ii. 2013 State House Plan

- Intentional Discrimination in the entire plan, in violation of the Fourteenth Amendment and the Voting Rights Act
- The Dallas-Fort Worth Region (Dallas and Tarrant Counties)
 - Vote dilution under the “effects test” of Section 2 of the Voting Rights Act
 - Additional minority opportunity districts can be drawn in the region while maintaining the districts in the region that already perform and allow minority voters to elect their candidate of choice
 - Intentional vote dilution and racial gerrymandering in violation of the Fourteenth Amendment and the Voting Rights Act
- Bell County
 - Vote dilution under the “effects test” of Section 2 of the Voting Rights Act
 - Additional minority opportunity districts can be drawn in the county while maintaining the districts in the region that already perform and allow minority voters to elect their candidate of choice
 - Intentional vote dilution and racial gerrymandering in violation of the Fourteenth Amendment and the Voting Rights Act
- Fort Bend County
 - Vote dilution under the “effects test” of Section 2 of the Voting Rights Act

- Additional minority opportunity districts can be drawn in the county while maintaining the districts in the region that already perform and allow minority voters to elect their candidate of choice

b. Types of Evidence Needed for Trial

With respect to the Section 2 effects claims the NAACP intends to pursue in their challenge to the 2013 Congressional and State House plans, the NAACP intends to present additional expert and lay testimony at trial. Specifically, new demonstrative maps will be provided to the Court to establish that the NAACP Plaintiffs can satisfy the first prong of *Gingles* in each area where Section 2 liability is claimed. Expert testimony will be needed to explain the maps and how they satisfy the first prong of *Gingles*. Likewise, the NAACP will present expert testimony on racially polarized voting and, in any coalition district sought to be established, data and expert testimony on political cohesion. There have been two general elections since the last trial, so there are a substantial number of new electoral races to examine. The NAACP Plaintiffs will also supplement their analysis of political cohesion where the Court indicated, in their analysis of the 2011 plans, such supplementation was required. Finally, because it has been three years since the last trial, the NAACP Plaintiffs anticipate the need for some lay testimony to update the totality of circumstances evidence this Court must consider before making any ruling on Section 2 effects liability. To be clear, the bulk of this Section 2 effects evidence would be needed for the 2013 trial, but not for the remedial hearing being proposed, which would be focused on fixing the legal flaws already identified by the Court in the two plans.

With respect to claims of intentional discrimination under the Fourteenth Amendment and Section 2 of the Voting Rights Act, the NAACP Plaintiffs anticipate need for some testimony from legislators who participated in the 2013 legislative process, but also anticipate

that other plaintiffs will likewise want to put on those witnesses and that the plaintiffs' efforts can be highly coordinated.

Some evidence can be stipulated to, such as election returns and TLC reports, similar to the evidence that all parties agreed was admissible in previous trials. The NAACP Plaintiffs do not believe, however, that such stipulations would significantly reduce trial time, as the parties were able to agree on such evidence in prior trials as well, and those trials were still lengthy.

Finally, should this Court decide to proceed to a full trial on the 2013 claims before entry of a remedial plan, the NAACP Plaintiffs request that the trial be conducted at approximately the same time a remedial hearing would have been conducted: late June or early July of 2017. A later trial schedule likely will not be able to guarantee resolution in time for the 2018 elections.

Dated: April 24, 2017.

Respectfully submitted,

/s/ Allison J. Riggs
Anita S. Earls
N.C. State Bar No. 15597
(Admitted Pro Hac Vice)
Allison J. Riggs
N.C. State Bar No. 40028
(Admitted Pro Hac Vice)
Southern Coalition for Social Justice
1415 West Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3380
Fax: 919-323-3942
Anita@southerncoalition.org
Allison@southerncoalition.org

Robert Notzon
Law Office of Robert S. Notzon
State Bar Number 00797934
1507 Nueces Street
Austin, TX 78701

512-474-7563
512-474-9489 fax
Robert@NotzonLaw.com

Victor L. Goode
Assistant General Counsel
NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215-3297
Telephone: 410-580-5120
Fax: 410-358-9359
vgoode@naacpnet.org

*Attorneys for the Texas State Conference of
NAACP Branches, Lawson and Wallace*

/s/ Gary L. Bledsoe
Gary L. Bledsoe
Potter Bledsoe, LLP
State Bar No. 02476500
316 West 12th Street, Suite 307
Austin, Texas 78701
Telephone: 512-322-9992
Fax: 512-322-0840
Garybledsoe@sbcglobal.net

Attorney for Howard Jefferson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via the Court's electronic notification system or email to the following on April 24, 2017:

TIMOTHY F. MELLETT
T. CHRISTIAN HERREN, JR.
BRYAN L. SELLS
JAYE ALLISON SITTON
DANIEL J. FREEMAN
MICHELLE A. MCLEOD
Attorneys
Voting Section, Civil Rights Division
U.S. Department of Justice
Room 7254 NWB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 305-4355

ATTORNEYS FOR PLAINTIFF UNITED STATES

PATRICK SWEETEN
Patrick.sweeten@oag.state.tx.us
MATTHEW HAMILTON FREDERICK
matthew.frederick@oag.state.tx.us
ANGELA V. COLMENERO
angela.colmenero@oag.state.tx.us
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, TX 78711
(512) 463-2120
(512) 320-0667 (facsimile)

ATTORNEYS FOR DEFENDANTS STATE OF TEXAS, ET AL.

DAVID RICHARDS
Texas Bar No. 1684600
Richards, Rodriguez & Skeith LLP
816 Congress Avenue, Suite 1200
Austin, TX 78701
512-476-0005
davidr@rrsfirm.com

RICHARD E. GRAY, III
State Bar No. 08328300
Gray & Becker, P.C.

900 West Avenue, Suite 300
Austin, TX 78701
512-482-0061
512-482-0924 (facsimile)
Rick.gray@graybecker.com

ATTORNEYS FOR PLAINTIFFS PEREZ, DUTTON, TAMEZ, HALL, ORTIZ, SALINAS,
DEBOSE, and RODRIGUEZ

JOSE GARZA
Texas Bar No. 07731950
Law Office of Jose Garza
7414 Robin Rest Dr.
San Antonio, Texas 78209
210-392-2856
garzpalm@aol.com

JOAQUIN G. AVILA
P.O. Box 33687
Seattle, WA 98133
206-724-3731
206-398-4261 (facsimile)
jgavotingrights@gmail.com
Served via electronic mail

ATTORNEYS FOR MEXICAN AMERICAN LEGISLATIVE CAUCUS

NINA PERALES
Texas Bar No. 24005046
nperales@maldef.org
ERNEST HERRERA
eherrera@maldef.org
Mexican American Legal Defense
and Education Fund
110 Broadway, Suite 300
San Antonio, TX 78205
(210) 224-5476
(210) 224-5382 (facsimile)

ATTORNEYS FOR PLAINTIFFS TEXAS LATINO REDISTRICTING TASK FORCE,
CARDENAS, JIMENEZ, MENENDEZ, TOMACITA AND JOSE OLIVARES, ALEJANDRO
AND REBECCA ORTIZ

ROLANDO L. RIOS
Law Offices of Rolando L. Rios
115 E Travis Street

Suite 1645
San Antonio, TX 78205
210-222-2102
rrios@rolandorioslaw.com

ATTORNEY FOR INTERVENOR-PLAINTIFF HENRY CUELLAR

MAX RENE A HICKS
Law Office of Max Renea Hicks
101 West Sixth Street
Suite 504
Austin, TX 78701
(512) 480-8231
512/480-9105 (fax)
rhicks@renea-hicks.com

ATTORNEY FOR PLAINTIFFS CITY OF AUSTIN, TRAVIS COUNTY, ALEX SERNA,
BEATRICE SALOMA, BETTY F. LOPEZ, CONSTABLE BRUCE ELFANT, DAVID
GONZALEZ, EDDIE RODRIGUEZ, MILTON GERARD WASHINGTON, and SANDRA
SERNA

CHAD W. DUNN
chad@brazilanddunn.com
K. SCOTT BRAZIL
scott@brazilanddunn.com
Brazil & Dunn
4201 FM 1960 West, Suite 530
Houston, TX 77068
281-580-6310
281-580-6362 (facsimile)

ATTORNEYS FOR INTERVENOR-DEFENDANTS TEXAS DEMOCRATIC PARTY and
BOYD RICHIE

JESSICA RING AMUNSON
jamunson@jenner.com
Jenner & Block LLP
1099 New York Ave., NW
Washington, D.C. 20001
202-639-6000

J. GERALD HEBERT
191 Somerville Street, # 405
Alexandria, VA 22304
703-628-4673

hebert@voterlaw.com

ATTORNEYS FOR PLAINTIFFS QUESADA, MUNOZ, VEASEY, HAMILTON, KING and JENKINS

LUIS ROBERTO VERA, JR.
Law Offices of Luis Roberto Vera, Jr. & Associates
1325 Riverview Towers
111 Soledad
San Antonio, Texas 78205-2260
210-225-3300
irvlaw@sbcglobal.net

GEORGE JOSEPH KORBEL
Texas Rio Grande Legal Aid, Inc.
1111 North Main
San Antonio, TX 78213
210-212-3600
korbellow@hotmail.com

ATTORNEYS FOR INTERVENOR-PLAINTIFF LEAGUE OF UNITED LATIN AMERICAN CITIZENS

/s/ Allison J. Riggs
Allison J. Riggs
Attorney for Texas NAACP, Bill Lawson, and Juanita Wallace