

**In the United States District Court  
for the  
Western District of Texas**

SHANNON PEREZ, ET AL.	§	
	§	
v.	§	SA-11-CV-360
	§	
GREG ABBOTT, ET AL.	§	

**ORDER**

On this date, the Court considered the Task Force Plaintiffs’ opposed Motion to Amend Complaint for Limited Purpose (docket no. 1419); the Quesada Plaintiffs’ opposed Motion to Compel (docket no. 1420); and Defendants’ opposed Motion to Exclude Expert (docket no. 1426).

**Motion to Amend Complaint**

The Task Force Plaintiffs’ motion to amend (docket no. 1419) is DENIED. Rule 15(a) provides that leave should be given “freely . . . when justice so requires,” Fed. R. Civ. P. 15(a), but Rule 16 provides that once a scheduling order has been entered, it “may be modified only for good cause” Fed. R. Civ. P. 16. As noted in the Court’s May 1, 2017 Scheduling Order, the prior scheduling order deadline for amendment of pleadings has passed and will not be re-opened. Docket no. 1389. The Court’s findings on the 2011 claims “do not give rise to claims or defenses that did not previously exist” and “the parties had ample opportunity to assert those claims.” *Id.* The Task Force Plaintiffs fail to

establish good cause for amending their pleadings just weeks before trial.

### **Motion to Compel**

The Quesada Plaintiffs' Motion to Compel discovery responses (docket no. 1420) is GRANTED.

RFA 9: Defendants have admitted this request. Defendants' objections lack merit and are overruled.

RFA 10: Defendants' objections lack merit and are overruled. Defendants are directed to answer.

RFA 11 and RFA 12: These requests ask Defendants to admit to the existence of racially polarized voting in Dallas and Tarrant Counties in the 2012, 2014, and 2016 elections. Defendants have denied these requests subject to certain objections. Defendants' objections generally lack merit and are overruled.

RFA 13 and RFA 14: These requests ask Defendants to admit that Anglos vote sufficiently as a bloc to usually defeat minorities' preferred candidates in Dallas and Tarrant County areas outside CD30 and CD33. Defendants have denied these requests subject to certain objections. Defendants' objections generally lack merit and are overruled.

RFA 15: This request asks Defendants to admit that in the 2012, 2014, and 2016 congressional primary elections in CD33, African-American voters voted cohesively and nominated their candidate of choice. Defendants have denied the request subject to certain objections. Defendants' objections generally lack merit

and are overruled.

Interrogatory No. 1: Defendants' objections are overruled, and Defendants are directed to answer with facts presently known to them that justify their answer. Further, with regard to RFA11 and RFA12 concerning racially polarized voting in Dallas and Tarrant Counties, Defendants need not cite every specific election fact that they rely on to support their answer, but may provide a synopsis of the election data upon which they rely.

### **Motion to Exclude Expert**

Defendants' opposed Motion to Exclude the expert testimony of Bernard Fraga, designated as an expert witness by the Texas Democratic Party and its Chairman Gilberto Hinojosa (collectively "TDP") is GRANTED. TDP filed partisan gerrymandering claims in this case, which this Court previously dismissed as against the 2011 and 2013 plans because TDP failed to enunciate a workable standard for such claims that had not already been rejected by the Supreme Court.

Although all of its claims had been dismissed, TDP timely filed an expert witness designation designating Fraga. Docket no. 1400. The designation acknowledges that all of TDP's claims have been dismissed and "that it is likely to not be permitted to offer evidence at the upcoming trial in this case." However, TDP asserts that "election data has developed, as has the law concerning partisan gerrymander claims" and the "Supreme Court is likely to consider a partisan gerrymander case in the next term and this case is likely to

be subjected to Supreme Court appellate review.” *Id.* TDP thus “desire[s] to timely file an expert designation and report under the developing partisan gerrymander standard of efficiency gap so that it is part of the Court record on appeal.” *Id.*

Defendants move to strike the report on that basis that it is irrelevant to any pending claims in the case. The Court agrees that the report, which pertains to claims that have been dismissed, is not relevant to any pending claims. Accordingly, the Court GRANTS the motion to strike. However, the excluded report may be submitted as an offer of proof pursuant to Federal Rule of Evidence 103(a)(2). *See Whitford v. Gill*, 218 F. Supp. 3d 837 (W.D. Wisc. 2017), *jurisdiction postponed*, No. 16-1161 (U.S. June 19, 2017).

SIGNED this 19th day of June, 2017.

\_\_\_\_\_/s/\_\_\_\_\_

XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE  
on behalf of the panel