

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.  
SA-11-CA-360-OLG-JES-XR  
[Lead case]

**DEFENDANTS' RESPONSE TO DIRECTIVE REGARDING THE STATE'S POSITION ON  
A SPECIAL SESSION FOR REDISTRICTING**

On May 22, 2017, the Court directed Defendants' counsel to confer with their clients and report to the Court whether or not the State wishes to voluntarily undertake redistricting in a special session. Counsel have conferred with their clients and now advise the Court that, for the following reasons, the State does not intend to undertake redistricting in a special session.

First, the Texas Legislature already convened in a special session in 2013 to adopt redistricting plans drawn by this Court as interim plans in 2012. The Court drew those plans according to the Supreme Court's instruction in this case: "to draw interim maps that do not violate the Constitution or the Voting Rights Act." *Perry v. Perez*, 565 U.S. 388, 396 (2012) (per curiam). And it drew those plans according to the Supreme Court's longstanding instruction that court-ordered redistricting plans must be drawn "in a manner 'free from any taint of arbitrariness or discrimination.'" *Connor v. Finch*, 431 U.S.

407, 415 (1977) (quoting *Roman v. Sincock*, 377 U.S. 695, 710 (1964)). When it implemented the interim Congressional plan, the Court “[took] care not to incorporate into the interim plan any legal defects in the state plan.” Order at 10–11 (March 19, 2012), ECF No. 691 (quoting *Perez*, 565 U.S. at 394). Similarly, in adopting the House plan, the Court followed “the Supreme Court’s direction to leave undisturbed any district that is free from legal defect” but not to “incorporate any portion of the State map that is allegedly tainted by discriminatory purpose.” Opinion at 2, 4 (March 19, 2012), ECF No. 690. The 2013 Legislature had every reason to believe the court-drawn plans complied with the Constitution and Voting Rights Act. The Legislature did not act with a discriminatory purpose, use race as the predominant factor, or violate the Voting Rights Act when it adopted plans this Court found to be free of legal defects.<sup>1</sup> Even the U.S. Department of Justice under the Obama Administration did not challenge the 2013 Legislature’s adoption of the court-drawn plans.

Second, any further attempt to reconfigure the State’s electoral districts will only result in new legal challenges. In 2013, the Legislature enacted this Court’s plans because it wanted to adopt fair, legal, and permanent redistricting plans. Nevertheless, the majority of plaintiffs alleged that the Legislature engaged in purposeful racial discrimination despite the fact that it enacted plans adopted by this Court. Thus, if the Legislature were to engage in a third round of redistricting this decade and redraw the

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<sup>1</sup> The Legislature’s 2013 House plan, Plan H358, is identical to the Court’s interim plan, Plan H309, except for minor amendments agreed upon by the affected House members.

State's electoral districts yet again, there is no reason to doubt that plaintiffs would bring a new set of claims against the new plans.<sup>2</sup>

Third, while new 2017 redistricting plans would lead to new claims of racial discrimination, a majority of this Court has already determined that they could not end the existing litigation against the plans adopted in 2013. Defendants have filed several motions to dismiss claims against the Legislature's 2011 redistricting plans as moot because the plans were never used in an election and were repealed in 2013. This Court has rejected every one of those motions. The State continues to maintain that legal claims against a statute are moot if that statute has never been used and has been repealed before taking legal effect. But if repeal of the 2011 plans did not moot the plaintiffs' claims against them, then repeal of the 2013 plans would not moot the plaintiffs' claims against them, either. Because the 2013 Legislature enacted fair and legal redistricting plans, the State does not intend to undertake yet another round of redistricting.

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<sup>2</sup> *See, e.g.*, Transcript of Status Conference (April 27, 2017) at 41:9–10 (“We are going to be back in court again. We all know that. We always are.”).

Date: May 25, 2017

Respectfully submitted.

KEN PAXTON  
Attorney General of Texas

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Senior Counsel for Civil Litigation

JEFFREY C. MATEER  
First Assistant  
Attorney General

MATTHEW H. FREDERICK  
Deputy Solicitor General

BRANTLEY STARR  
Deputy First Assistant  
Attorney General

OFFICE OF THE ATTORNEY GENERAL  
P.O. Box 12548 (MC 059)  
Austin, Texas 78711-2548  
Tel.: (512) 463-4139  
Fax: (512) 474-2697

JAMES E. DAVIS  
Deputy Attorney General  
for Litigation

COUNSEL FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this filing was sent on May 25, 2017, via the Court's CM/ECF system and/or email to the following counsel of record:

DAVID RICHARDS  
Richards, Rodriguez & Skeith LLP  
816 Congress Avenue, Suite 1200  
Austin, TX 78701  
512-476-0005  
davidr@rrsfirm.com

RICHARD E. GRAY, III  
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  
Law Office of Jose Garza  
7414 Robin Rest Dr.  
San Antonio, Texas 78209  
210-392-2856  
garzpalm@aol.com

MARK W. KIEHNE  
RICARDO G. CEDILLO  
Davis, Cedillo & Mendoza  
McCombs Plaza  
755 Mulberry Ave., Ste. 500  
San Antonio, TX 78212  
210-822-6666/210-822-1151 (facsimile)  
mkiehne@lawdcm.com  
rcedillo@lawdcm.com

GERALD H. GOLDSTEIN  
DONALD H. FLANARY, III  
Goldstein, Goldstein and Hilley  
310 S. St. Mary's Street  
San Antonio, TX 78205-4605  
210-226-1463/210-226-8367 (facsimile)  
ggandh@aol.com  
donflanary@hotmail.com

JESSICA RING AMUNSON  
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

JESSE GAINES  
P.O. Box 50093  
Fort Worth, TX 76105  
817-714-9988  
gainesjesse@ymail.com  
**ATTORNEYS FOR PLAINTIFFS  
QUESADA, MUNOZ, VEASEY,  
HAMILTON, KING and JENKINS**

JOAQUIN G. AVILA  
P.O. Box 33687  
Seattle, WA 98133  
206-724-3731/206-398-4261 (facsimile)  
jgavotingrights@gmail.com  
**ATTORNEYS FOR MEXICAN  
AMERICAN LEGISLATIVE CAUCUS**

NINA PERALES  
MARISA BONO  
Mexican American Legal Defense  
and Education Fund  
110 Broadway, Suite 300  
San Antonio, TX 78205  
210-224-5476/210-224-5382 (facsimile)  
nperales@maldef.org  
mbono@maldef.org

MARK ANTHONY SANCHEZ  
ROBERT W. WILSON  
Gale, Wilson & Sanchez, PLLC  
115 East Travis Street, Ste. 1900  
San Antonio, TX 78205  
210-222-8899/210-222-9526 (facsimile)  
masanchez@gws-law.com  
rwwilson@gws-law.com  
**ATTORNEYS FOR TEXAS LATINO  
REDISTRICTING TASK FORCE,  
CARDENAS, JIMENEZ,  
MENENDEZ, TOMACITA AND  
JOSE OLIVARES, ALEJANDRO AND  
REBECCA ORTIZ**

JOHN T. MORRIS  
5703 Caldicote St.  
Humble, TX 77346  
281-852-6388  
johnmorris1939@hotmail.com  
**JOHN T. MORRIS, PRO SE**

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

GEORGE JOSEPH KORBEL  
Texas Rio Grande Legal Aid, Inc.  
1111 North Main  
San Antonio, TX 78213  
210-212-3600  
korbellaw@hotmail.com  
**ATTORNEYS FOR  
INTERVENOR-PLAINTIFF  
LEAGUE OF UNITED LATIN  
AMERICAN CITIZENS**

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**

VICTOR L. GOODE  
Asst. Gen. Counsel, NAACP  
4805 Mt. Hope Drive  
Baltimore, MD 21215-5120  
410-580-5120/410-358-9359 (facsimile)  
vgoode@naacpnet.org  
**ATTORNEY FOR TEXAS STATE  
CONFERENCE OF NAACP  
BRANCHES**

MAX RENEA HICKS  
Law Office of Max Renea Hicks  
101 West Sixth Street Suite 504  
Austin, TX 78701  
512-480-8231/512/480-9105 (facsimile)  
**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**

STEPHEN E. MCCONNICO  
SAM JOHNSON  
S. ABRAHAM KUCZAJ, III  
Scott, Douglass & McConnico  
One American Center  
600 Congress Ave., 15th Floor  
Austin, TX 78701  
512-495-6300/512-474-0731 (facsimile)  
smconnico@scottdoug.com  
sjohnson@scottdoug.com  
akuczaj@scottdoug.com  
**ATTORNEYS FOR PLAINTIFFS  
CITY OF AUSTIN, TRAVIS  
COUNTY, ALEX SERNA,  
BALAKUMAR PANDIAN,  
BEATRICE SALOMA, BETTY F.  
LOPEZ, CONSTABLE BRUCE  
ELFANT, DAVID GONZALEZ,  
EDDIE RODRIGUEZ, ELIZA  
ALVARADO, JOSEY MARTINEZ,  
JUANITA VALDEZ-COX, LIONOR  
SOROLA-POHLMAN, MILTON  
GERARD WASHINGTON, NINA JO  
BAKER, and SANDRA SERNA**

GARY L. BLEDSOE  
Law Office of Gary L. Bledsoe  
316 W. 12<sup>th</sup> Street, Ste. 307  
Austin, TX 78701  
512-322-9992/512-322-0840 (facsimile)  
garybledsoe@sbcglobal.net  
**ATTORNEY FOR INTERVENOR-  
PLAINTIFFS TEXAS STATE  
CONFERENCE OF NAACP  
BRANCHES, TEXAS  
LEGISLATIVE BLACK CAUCUS,  
EDDIE BERNICE JOHNSON,  
SHEILA JACKSON-LEE,  
ALEXANDER GREEN, HOWARD  
JEFFERSON, BILL LAWSON, and  
JUANITA WALLACE**

ROBERT NOTZON  
1507 Nueces Street  
Austin, TX 78701  
512-474-7563/512-474-9489 (facsimile)  
[robert@notzonlaw.com](mailto:robert@notzonlaw.com)

ALLISON JEAN RIGGS  
ANITA SUE EARLS  
Southern Coalition for Social Justice  
1415 West Highway 54, Ste. 101  
Durham, NC 27707  
919-323-3380/919-323-3942 (facsimile)  
[anita@southerncoalition.org](mailto:anita@southerncoalition.org)  
**ATTORNEYS FOR TEXAS STATE  
CONFERENCE OF NAACP  
BRANCHES, EARLS, LAWSON,  
WALLACE, and JEFFERSON**

KAREN M. KENNARD  
2803 Clearview Drive  
Austin, TX 78703  
(512) 974-2177/512-974-2894 (facsimile)  
karen.kennard@ci.austin.tx.us  
**ATTORNEY FOR PLAINTIFF  
CITY OF AUSTIN**

DAVID ESCAMILLA  
Travis County Asst. Attorney  
P.O. Box 1748  
Austin, TX 78767  
(512) 854-9416  
david.escamilla@co.travis.tx.us  
**ATTORNEY FOR PLAINTIFF  
TRAVIS COUNTY**

RICHARD L. DURBIN, JR., T.  
CHRISTIAN HERREN, JR., TIMOTHY  
F. MELLET, JAYE ALLISON SITTON,  
DANIEL J. FREEMAN  
U.S. Department of Justice  
Civil Rights Division, Voting Rights  
Room 7254 NWB  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
(202) 305-4355; (202) 305-4143  
**ATTORNEYS FOR THE  
UNITED STATES**

DONNA GARCIA DAVIDSON  
PO Box 12131  
Austin, TX 78711  
512-775-7625/877-200-6001 (facsimile)  
donna@dgdlawfirm.com  
**ATTY FOR DEFENDANT STEVE  
MUNISTERI**

CHAD W. DUNN  
K. SCOTT BRAZIL  
Brazil & Dunn  
4201 FM 1960 West, Suite 530  
Houston, TX 77068  
281-580-6310/281-580-6362 (facsimile)  
chad@brazilanddunn.com  
scott@brazilanddunn.com  
**ATTORNEYS FOR  
INTERVENOR-DEFS TEXAS  
DEMOCRATIC PARTY and BOYD  
RICHIE**

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Counsel for Defendants