

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHANNON PEREZ, et al.

Plaintiffs

v.

STATE OF TEXAS, et al.

Defendants

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CIVIL ACTION NO.
5:11-CV-0360-OLG-JES-XR
[Lead Case]

AMENDED NON U.S. PLAINTIFFS' JOINT MOTION FOR ENTRY OF JUDGMENT

Non U.S. Plaintiffs¹ in this action respectfully move this Court for entry of judgment in Plaintiffs' favor to be entered no later than January 18, 2017. Plaintiffs make this request out of concern that without resolution of their claims regarding the 2011 redistricting plans for the Texas House of Representatives and Texas Congressional districts, redistricting plans adopted to disadvantage minority voters will not be completely remedied in time for yet another election in 2018. In addition, Plaintiffs fear that any further delay in the entry of judgment on their claims, when considering the remaining issues yet to be litigated and concomitant potential appeals, may be overlapped by the release of a new census in 2021. Thus, further delay may interfere with a final and complete resolution of Plaintiffs' claims.

Background

On May 9, 2011, Plaintiffs filed the above titled action against the State of Texas seeking relief for alleged vote dilution and intentional discrimination in the adoption and implementation

¹ This refers to plaintiffs other than the United States. They are: MALC, Texas Latino Redistricting Task Force, et al., LULAC, Perez, et al., Rodriguez, et al., Quesada et al., Texas State Conference of NAACP Branches, et al., Jefferson et al., Congressman Cuellar, and the Texas Democratic Party.

of the redistricting maps for the Texas House of Representatives, the Texas Senate, and Texas' delegation to the United States House of Representatives. On September 1, 2011, trial on the merits commenced with regard to the Texas House maps and the Congressional maps. After trial, Plaintiffs sought and were awarded a preliminary injunction preventing the implementation of the legislatively-adopted maps, as those plans had not been pre-cleared pursuant to federal law.

After seeking input from the parties, in November of 2011, this Court adopted interim relief that reversed many of the discriminatory elements of the State's redistricting plans. This interim relief included the creation of majority-minority house districts in South Texas, Houston, El Paso, and San Antonio, as well as modifications to CD 23 and other Central-South Texas districts and a majority-minority congressional district in the Dallas/Fort Worth area (CD 33). Even after this order was vacated and remanded with instructions by the United States Supreme Court, some of the relief sought by the plaintiffs was finally included in the second set of remedial maps ordered by this Court.²

However, this relief was not final relief, as this Court was obligated to wait until a final determination of Texas' suit for pre-clearance was made by a three-judge panel in the District Court of the District of Columbia in *Texas v. United States*, 1:11-cv-1303, (RMC-TBG-BAH), Three Judge Court. On August 28, 2012, (as corrected Aug. 30, 2012), the U.S. District Court for the District of Columbia denied preclearance of the Texas redistricting plans based on findings of both retrogression and intent.³

² This motion is not intended to be a restatement of all the relief sought and obtained by each plaintiff group, and each plaintiff group relies on its pleadings and briefing in support of the relief sought.

³ Specifically, the three-judge panel found that the plans for Texas' congressional plan and the Texas House of Representatives were retrogressive. The court also found that there was intentional discrimination in the enactment of the Texas Senate and the congressional plan. In addition, the panel held that "the full record strongly suggests that the retrogressive effect we have found may not have been accidental" in the creation of the Texas House redistricting plan. *Texas v. United States*, 887 F. Supp. 2d 133, 178 (D.D.C. 2012), vacated and remanded, 133 S. Ct. 2885, 186 L. Ed. 2d 930 (2013).

On June 23, 2013, the State legislatively adopted the court-ordered interim relief with some adjustments in the State House map (but no changes to the Congressional map). After enactment of the court-ordered plans, the State formally sought to end this case with a motion to dismiss for mootness. This motion was denied by this Court on September 6, 2013.

The following year, on June 14, 2014, this Court entered an order setting trial to hear evidence concerning the adoption of the 2011 House and Congressional maps. Trial on the Texas House plan commenced on July 19, 2014. From August 11 – 16, this Court heard evidence relating to the 2011 congressional plan. On October 30, 2014, the parties filed post-trial briefs. On December 4, 2014, the parties filed post-trial reply briefs.

In 2015, this Court directed the parties to file briefs concerning how the Supreme Court's decision in *Alabama Legislative Black Caucus v. Alabama* might affect the remaining claims at issue in this case.⁴ In October 2015 some of the plaintiffs sought a preliminary injunction to enjoin implementation of the 2013 plans for the 2016 election cycle. The Court denied this motion. In the order denying this motion for injunction, the Court stated, “[that it] has been working diligently and has made substantial progress toward resolution of the claims on the 2011 plans; however, it has not yet reached a final decision. Trial on the merits of the claims against the 2013 plans has not been scheduled, and legal challenges to the 2013 plans will not be resolved before the 2016 election cycle.”

In 2016, this Court ordered the litigants to file supplemental briefs regarding another U.S. Supreme Court redistricting decision, this time in Arizona. However, no additional evidence or testimony was submitted. On July 29, 2016, some plaintiffs filed an unopposed motion seeking a

⁴ The Task Force Plaintiffs submitted additional declarations responding to an argument raised by the State in its briefing related to this case.

conference with the Court to establish a schedule for the residual claims concerning the adoption of the 2013 maps. No action was taken on that motion.

The current status of this case has remained unchanged since the 2014 trial (now over 28 months) and since this Court's order denying Plaintiffs a preliminary injunction. The litigants in this cause have had two trials totaling hundreds of hours of testimony and thousands of pages of exhibits and evidence. All pending issues have been briefed extensively. Plaintiffs have survived multiple attempts to dismiss this cause of action. There has been one interlocutory appeal and more contentious appeals loom on the horizon. It has been 2,063 days since the filing of this lawsuit. It has been 1,748 days since this Court ordered its second interim maps. It has been 758 days since final post trial briefing was filed in this cause. In the ensuing elections, more than 19 million votes have been cast in Texas general elections using maps that plaintiffs contend violate the United States Constitution and federal law.

Argument

Since the conclusion of trial on the 2011 plans in the autumn of 2014, Plaintiffs have sought a scheduling conference. They have sought an injunction. They have filed hundreds of pages of briefs, and they have waited more than two years for a decision from this Court. They have also filed correspondence directly with the members of the Court urging action. Exhibit A.

The timetable for final resolution of this case are affected by the need to allow the Defendants an opportunity to remedy any potential violation found by this Court. Thus, should a court ruling be forthcoming, the State would then have an opportunity to adopt additional modifications to its plans not already addressed by this Court's interim plan. Potentially, then, no action on the 2013 plan would commence until after the 2017 Texas legislative session.

Plaintiffs recognize the complexity of this case, as well as the density and magnitude of the evidence before this Court. This is an important case that impacts the fundamental rights of the plaintiffs to vote in House and Congressional districts that meet the requirements of the Constitution and federal law. The case is both procedurally and substantively complex, and no matter the action of this Court, it likely will be litigated further on appeal. However, the plaintiffs cannot begin to take action on the 2013 case until this Court rules on the pending claims on the 2011 plans. Nor can any appellate review commence. If no order is issued in the coming weeks, then the plaintiffs' active claims concerning the 2013 case may be affected and an opportunity for final resolution before the 2018 election cycle will be jeopardized. Moreover, evidence may grow stale and become unavailable. Indeed, the delay may extend to the release of the 2020 Census, placing final resolution here at risk. Votes are being cast. And the rights of millions of Texans hang in the balance.

According to the 2015 Strategic Plan for the Federal Judiciary, the "core values" of the judiciary include a "commitment to the faithful discharge of official duties . . . [and] dedication to meeting the needs of jurors, court users, and the public in a timely and effective manner." Judicial Conference of the United States, *Strategic Plan for the Federal Judiciary*, at 2 (September 2015).⁵ This plan, issued more than a year ago, "anticipates a future in which the federal judiciary is noteworthy for its accessibility, timeliness . . . and enjoys the people's trust and confidence." *Id.* at 3. These values and vision are important because the

ability of courts to fulfill their mission and perform their functions is based on the public's trust and confidence in the system. In large part, the judiciary earns that trust and confidence by faithfully performing its duties, adhering to ethical standards, and effectively carrying out internal oversight, review, and governance responsibilities.

⁵ Available at <http://www.uscourts.gov/statistics-reports/strategic-plan-federal-judiciary>

Id. at 7; *see also*, Judicial Conference of the United States, *Code of Conduct for United States Judges*, Canon 3A(5) (March 2014) (directing judges to “dispose promptly of the business of the court”).

This case was commenced with the filing of initial complaints in May of 2011. R. Doc. 1. At the request of United States District Judge Orlando L. Garcia, a three judge court was designated by Edith H. Jones, Chief Judge of the United State Court of Appeals for the Fifth Circuit. R. Doc. 4. In the Order Constituting Three-Judge Court, Justice Jones commanded that the designated judges forming the three-judge court to “hear and **resolve this matter.**” *Id.* (emphasis added). The authority for forming a three-judge court in this case is determined by 28 U.S.C. § 2284. Section 2284 requires courts designated under this provision to “to hear and **determine** the action or proceeding.” Failure to reach a resolution and enter judgment is a failure to exercise jurisdictional and judicial duty.

Conclusion and Prayer

Non U.S. Plaintiffs therefore respectfully request an entry of judgment no later than January 18, 2017. Should no order be forthcoming from this Court in the near future, private plaintiffs will consider this motion effectively denied. In that event, we will have no alternative but to seek appropriate appellate review and relief directing this Court to take action by a date certain. *Cf. Veasey v. Abbott*, 136 S. Ct. 1823, 194 L. Ed. 2d 828 (2016) (in which the U.S. Supreme Court directed the Fifth Circuit to resolve the Texas photo ID challenge by a date certain and inviting the plaintiffs to return to the Court for relief if no decision was reached in the Fifth Circuit by the Supreme Court’s deadline).

DATED: January 2, 2017

Respectfully submitted,

/s/ Jose Garza

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AS CHAIR OF THE TEXAS
DEMOCRATIC PARTY

CERTIFICATE OF CONFERENCE

I hereby certify that on the 29th and 30th of December, 2016, I conferred with counsel for the State Defendants. I have been informed that the State Defendants oppose this Motion. On the 30th of December, I also conferred with counsel for the United States and have been informed that the United States takes no position on this Motion.

/s/ Jose Garza
JOSE GARZA

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of January, 2017, I electronically filed the foregoing using the CM/ECF system which will send notification of such filing to all counsel of record who have registered with this Court's ECF system, and via first class mail to those counsel who have not registered with ECF.

/s/ Jose Garza
JOSE GARZA

EXHIBIT A

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November 29, 2016

The Honorable Jerry E. Smith
Circuit Judge, United States Court of Appeals - Fifth Circuit
515 Rusk Avenue, Room 12621
Houston, Texas 77002-2698

The Honorable Orlando Garcia
Chief Judge, United States District Court of Texas,
Western District - San Antonio Division
655 E. Cesar E. Chavez Blvd.
San Antonio, Texas 78206

The Honorable Xavier Rodriguez
United States District Court of Texas,
Western District of Texas - San Antonio Division
655 E. Cesar E. Chavez Blvd.
San Antonio, Texas 78206

Re: Perez, et al. v. Perry, et al., Case 5:11-cv-00360

Dear Judge Smith, Chief Judge Garcia, and Judge Rodriguez:

On May 9, 2011, the plaintiffs filed the above titled action against the State of Texas seeking relief for alleged vote dilution and intentional discrimination in the adoption and implementation of the redistricting maps for the Texas House of Representatives, the Texas Senate, and Texas' delegation to the United States House of Representatives. On September 1,

2011, trial on the merits commenced. After trial, the plaintiffs sought and were awarded a preliminary injunction preventing the implementation of the legislatively-adopted maps, as those plans had not been pre-cleared pursuant to federal law. The maps adopted by the State of Texas were never implemented because of the actions of the plaintiffs.

After seeking input from the parties, in November of 2011, this Court adopted interim relief that reversed many of the discriminatory elements of the State's redistricting plans. This interim relief included the creation of minority-majority house districts in South Texas, Houston, El Paso, and San Antonio, as well as modifications to CD 23 and a majority-minority congressional district in the Dallas/Fort Worth area. Even after this order was vacated and remanded with instructions by the United States Supreme Court, some of the relief sought by the plaintiffs was finally included in the second set of remedial maps ordered by this Court.

However, this relief was not final relief, as this Court was obligated to wait until a final determination of Texas' suit for pre-clearance was made by a three-judge panel in the District Court of the District of Columbia in *Texas v. United States*, 1:11-cv-1303, (RMC-TBG-BAH), Three Judge Court. On August 28, 2011, the District Court in the District of Columbia denied preclearance of the Texas redistricting plans, based both on findings of retrogression and intent.

On June 23, 2013, the State adopted the court-ordered interim relief with some adjustments. After enactment of the court-ordered plans, the State formally sought to end this case with a motion to dismiss for mootness. This motion was denied by this Court on September 6, 2013.

The following year on June 14, 2014, this Court entered an order setting trial to hear evidence concerning the adoption of the 2011 House and Congressional maps. Trial on the Texas House plan commenced on July 19, 2014. From August 11 – 16, this Court heard evidence relating to the 2011 congressional plan. On October 30, 2014, the parties filed post trial briefs. On December 4, 2014, the parties filed post-trial reply briefs.

In 2015, this Court directed the parties to file briefs concerning how the Supreme Court's decision in *Alabama Legislative Black Caucus v. Alabama* might affect the remaining claims at issue in this case. In October of 2015, some of the plaintiffs sought a preliminary injunction to enjoin implementation of the 2013 plans for the 2016 election cycle. The Court denied this motion. In the order denying this motion for injunction, the Court stated, "[that it] has been working diligently and has made substantial progress toward resolution of the claims on the 2011 plans; however, it has not yet reached a final decision. Trial on the merits of the claims against the 2013 plans has not been scheduled, and legal challenges to the 2013 plans will not be resolved before the 2016 election cycle."

In 2016, this Court ordered that the litigants file supplemental briefs regarding another U.S. Supreme Court redistricting decision in Arizona. On July 29, 2016, another set of plaintiffs sought a scheduling conference to establish a schedule for the residual claims concerning the adoption of the 2013 maps.

The current status of this case has remained unchanged since the court order denying the plaintiffs a preliminary injunction. The litigants in this cause have had two trials totaling hundreds of hours of testimony and thousands of pages of exhibits and evidence. All pending issues have been briefed extensively. The plaintiffs have survived multiple attempts to dismiss this cause of action. There has been one interlocutory appeal and more contentious appeals loom on the horizon. It has been 2,032 days since the filing of this lawsuit. It has been 1,717 days since this Court ordered its second interim maps. It has been 727 days since final post trial briefing was filed in this cause. In the ensuing elections, more than 19 million votes have been cast in Texas general elections using maps that plaintiffs contend violate U.S. federal law.

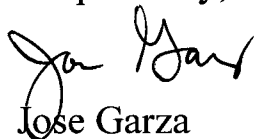
In sum, since the close of evidence on the 2011 plans in the autumn of 2014, the plaintiffs have sought a scheduling conference. They have sought an injunction. They have filed hundreds of pages of briefs and they have waited two years for an order from this Court.

All litigants in this suit understand the density and magnitude of the evidence before this Court. This is a difficult case that is both procedurally and substantively complex and no matter the action of this court, it promises to continue on appeal. However, the plaintiffs cannot begin to take action on the 2013 case, until this Court rules on the pending claims on the 2011 plans. If no order is issued in the coming days, then the plaintiffs' active claims concerning the 2013 case may not receive a hearing and an opportunity for appeal before the 2018 election cycle. Evidence is growing stale. Votes are being cast. And the rights of millions of Texans hang in the balance.

It is with the utmost respect that the private plaintiffs ask this Court to act. The Preamble to both the Texas Code of Professional Responsibility and the ABA Model Rules of Professional Conduct obligate us to zealously represent our clients. Our clients, millions of Texans affected by Texas' vote dilution, and the future of our state require action. At this time, the private plaintiffs in this action respectfully request that this Court issue its order concerning the existing claims for the 2011 state house and congressional plans by December 13, 2016. We are duty bound to take action, even extraordinary action, to best ensure that our clients' claims are protected. Our time is running short as the next Legislative session approaches—the next to last regular Legislative session prior to the upcoming regular redistricting session in 2021.

Every litigant, party, and participant in this action respects the extensive time the Court has dedicated to this litigation, but we have an affirmative obligation to move this litigation. This Court has already taken significant steps through its interim remedy. However, there is more work to be done. The fate of millions rest in the hands of this Court. That is why we are making this extraordinary request.

Respectfully,



Jose Garza

Attorney for Plaintiff MALC

/s/ Nina Perales

Nina Perales

Attorney for Plaintiff Texas Redistricting Task Force, et al.

/s/ David Richards

David Richards

Attorney for Plaintiff Perez, et al.

/s/ Luis Vera

Luis Vera

Attorney for Plaintiff LULAC

/s/ Gary Bledsoe

Gary Bledsoe

Attorney for Howard Jefferson and Congress-Persons Eddie Bernice Johnson, Sheila Jackson-Lee, Alexander Green

/s/ Allison J. Riggs

Allison J. Riggs

Attorney for Texas State Conference of NAACP Branches, et al.,

/s/ M. Renea Hicks

M. Renea Hicks

Attorney for Plaintiff Rodriguez, et al.,

/s/ Gerald Hebert

J. Gerald Hebert

Attorney for Plaintiffs Quezada et al.

/s/ Chad Dunn

Chad Dunn

Attorney for Texas Democratic Party and Chairman Gilberto Hinojosa

Cc:

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHANNON PEREZ, et al.

Plaintiffs

v.

STATE OF TEXAS, et al.

Defendants

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§ CIVIL ACTION NO.
§ 5:11-CV-0360-OLG-JES-XR
§ [Lead Case]
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ORDER

Pending before the Court is the Motion for Entry of Judgment filed by Plaintiffs Mexican American Legislative Caucus (MALC), the Texas Latino Redistricting Taskforce (LRTF), League of United Latin American Citizens (LULAC), Texas State Conference of NAACP Branches, et al., Perez, et al., Jefferson, et al., Quesada, et al., Congressman Cuellar, and the Texas Democratic Party, et al.

After considering that Motion, pleadings on file and arguments of counsel, and after due consideration, it is ORDERED that the Plaintiffs’ Motion for Entry of Judgment is GRANTED. An order adjudicating all claims pending before this Court concerning the creation, adoption, and implementation of the 2011 redistricting plans for Texas’ delegation to the United States House of Representatives, and the Texas House will issue on or before January ____, 2017.

Dated: _____

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

JERRY E. SMITH
UNITED STATES CIRCUIT JUDGE
FOR THE FIFTH CIRCUIT