

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

SHANNON PEREZ, *et al.*,)
)
 Plaintiffs,) CIVIL ACTION NO.
) SA-11-CA-360-OLG-JES-XR
) [Lead case]

v.)
)
 STATE OF TEXAS, *et al.*,)
)
 Defendants.)

MEXICAN AMERICAN LEGISLATIVE)
 CAUCUS, TEXAS HOUSE OF) CIVIL ACTION NO.
 REPRESENTATIVES (MALC),) SA-11-CA-361-OLG-JES-XR
) [Consolidated case]

Plaintiffs,)
)
 v.)
)
 STATE OF TEXAS, *et al.*,)
)
 Defendants.)

TEXAS LATINO REDISTRICTING TASK)
 FORCE, *et al.*,) CIVIL ACTION NO.
) SA-11-CV-490-OLG-JES-XR
) [Consolidated case]

Plaintiffs,)
)
 v.)
)
 RICK PERRY,)
)
 Defendant.)

MARAGARITA V. QUESADA, *et al.*,)
) CIVIL ACTION NO.
) SA-11-CA-592-OLG-JES-XR
) [Consolidated case]

v.)
)
 RICK PERRY, *et al.*,)

<i>Defendants.</i>)	
_____)	
JOHN T. MORRIS,)	CIVIL ACTION NO.
)	SA-11-CA-615-OLG-JES-XR
<i>Plaintiff,</i>)	[Consolidated case]
)	
v.)	
)	
STATE OF TEXAS, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
_____)	
EDDIE RODRIGUEZ, <i>et al.</i> ,)	CIVIL ACTION NO.
)	SA-11-CA-635-OLG-JES-XR
<i>Plaintiffs,</i>)	[Consolidated case]
)	
v.)	
)	
RICK PERRY, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

MOTION TO SUBSTITUTE PLAINTIFF-INTERVENOR

Following the death of NAACP Plaintiff-Intervenor Juanita Wallace on September 4, 2016, Movant Juan Ivett Wallace seeks to be substituted as NAACP Plaintiff-Intervenor in this action under Federal Rule of Civil Procedure 25(a). Substitution is appropriate because Juan Wallace is Dr. Wallace’s daughter and heir. The Court should accordingly grant Juan Wallace’s Motion.

BACKGROUND

In this consolidated civil action, NAACP Plaintiff-Intervenors challenge the 2011 and 2013 redistricting plans for Texas’ legislative and congressional delegations under Section 2 of the Voting Rights Act of 1965 and the Fourteenth Amendment to the United States Constitution.

See NAACP Pl.-Intervenors' Am. Compl., No. 5:11-cv-360, Dkt. 900. NAACP Plaintiff-Intervenors—the Texas State Conference of NAACP Branches and individual members of the Texas NAACP who live in challenged districts—filed their complaint in intervention on July 26, 2011, and two years later amended their complaint to include a challenge to the 2013 plan. Compl., Dkt. 69; Am. Compl., Dkt. 900. Dr. Wallace challenged the redistricting plans both as president of the Dallas NAACP and as a registered voter in challenged Congressional District 30 and State House District 100. Am. Compl. 4, Dkt. 900. A two-phase trial was held before a three-judge panel of this Court on July 14-19 and August 11-14, 2014, and the Court's ruling has been pending since that time. On September 4, 2016, Dr. Wallace passed away. Dr. Wallace does not have an estate pending for administration, and therefore has no personal representative. Dr. Wallace's daughter, Juan Wallace, now wishes to continue her mother's legacy of commitment to civil rights by moving this court for her substitution as Plaintiff-Intervenor.

ARGUMENT

Upon the death of a party, “courts now liberally permit substitution motions.” *Pastorello v. City of New York*, No. 95-cv-470, 2000 U.S. Dist. LEXIS 15137, *4 (S.D.N.Y. Oct. 18, 2000). Under the Federal Rules of Civil Procedure, “[i]f a party dies and the claim is not extinguished, the court may order substitution” on motion “by any party or by the decedent's successor or representative.” Fed. R. Civ. P. 25(a). Dr. Wallace's claim has not been extinguished because the Court can continue to grant effective relief by enjoining use of the challenged districts in future elections, and Juan Wallace is entitled to continue Dr. Wallace's claim as her heir.

I. Dr. Wallace's claim has not been extinguished.

Dr. Wallace's claim in equity has not been extinguished upon her death because the Court can continue to grant effective relief by enjoining future use of the challenged districts, which are

currently being used in congressional and legislative elections in Texas. *See Reynolds v. Dallas Area Rapid Transit*, No. 3:98-cv-982, 2000 U.S. Dist. LEXIS 15536, *1 n.1 (N.D. Tex. Oct. 20, 2000) (decedent plaintiff's wife permitted to substitute as plaintiff in employment discrimination action under the Civil Rights Act of 1964); *Allison v. City of Fort Worth*, 60 F. Supp. 2d 589, 591 n.1 (N.D. Tex. 1999) (executrix of decedent plaintiff's estate permitted to substitute as plaintiff in Equal Protection employment discrimination action); Am. Jur. 2d Abatement, Survival & Revival § 60 ("The principle that a cause of action expires with the death or disability of a party generally does not apply to suits in equity; equitable remedies exist to the same extent in favor of and against executors and administrators as they do against the decedent as long as the court can continue to grant effective relief in spite of the death."). *But see Plumley v. Landmark Chevrolet*, 122 F.3d 308, 312 (5th Cir. 1997) (where there was no "real or immediate threat" of continued harm on the decedent plaintiff's death, his wife lacked standing to substitute as plaintiff in an action for injunctive relief under the ADA).

The ongoing harm Dr. Wallace sought to remedy in filing this challenge is both real and immediate, as the challenged districts are being used currently to elect congressional and state house representatives in Texas. The effects of this continued harm are not limited to Dr. Wallace's legal successors, but are also applicable to similarly situated members of the Dallas NAACP, who bear the discriminatory effects of the challenged legislation on African-American voters across Texas, and registered voters in Congressional District 30 and State House District 100, which Dr. Wallace challenged as racially discriminatory to all voters who reside therein. Am. Compl. ¶¶ 20, 44, 57. In the face of this ongoing harm and its implications for thousands of other Texas residents, Dr. Wallace's valid claim should not be allowed to abate simply because she died while the trial court's decision was pending, more than two years after trial.

II. Juan Ivett Wallace is entitled to continue Dr. Wallace's claim.

Though the “method employed by the federal court to substitute ... a party is directed by the federal rules,” *Ransom v. Brennan*, 437 F.2d 513, 520 (5th Cir. 1971), determining *who* is a proper party for substitution is a question of state law. *Diehl v. United States*, 438 F.2d 705, 710–711 (5th Cir. 1971) (neither executrix nor temporary administrator could be substituted when their appointments were invalid under state law); *See also In Re Baycol Prods. Litig.*, 616 F.3d 778, 785 (8th Cir. 2010) (state substantive law governs “who can qualify as a proper party for substitution under Rule 25(a)(1)). Texas state law dictates that in cases where the original plaintiff’s claim is not extinguished on death, a decedent’s successor or representative may continue the claim in his or her own name as if the original plaintiff were prosecuting it. *See, e.g., Allison*, 60 F. Supp. 2d at 591 n.1 (executrix of decedent plaintiff’s estate permitted to substitute and continue decedent’s Equal Protection claim); *Glover v. Landes*, 530 S.W.2d 910, 911 (Tex. Civ. App. 1975) (“Executors qualified in probate proceedings in a Texas court have broad statutory authority to bring all actions necessary to collect, to preserve and to protect the estate.”); Tex. R. Civ. P. 151 (“If the plaintiff dies, the heirs, or the administrator or executor of such decedent may appear and upon suggestion of such death being entered of record in open court, may be made plaintiff, and the suit shall proceed in his or their name.”).

Where no administration of the estate is pending and none is necessary, such that no personal representative would exist, it is appropriate for the court to allow substitution of the decedent’s heirs. *See Jansen v. Fitzpatrick*, 14 S.W.3d 426, 433 (Tex. App. 2000) (holding that when a plaintiff dies while a lawsuit is still pending, his or her heirs may be made plaintiff if they allege that an administration of the estate is neither open nor necessary). *See also Kenseth v. Dallas County*, 126 S.W.3d 584, 595 (Tex. App. 2004) (where mother of the deceased plaintiff

presented uncontroverted evidence that she was the sole heir of plaintiff and that no administration of plaintiff's estate was pending or necessary); *Ragsdale v. Prather*, 132 S.W.2d 625, 627 (Tex. Civ. App. 1939) (holding that heirs of a decedent may be substituted as plaintiffs upon allegation and proof that there is no administration pending upon the estate)

No administration of Dr. Wallace's estate is currently pending, nor is any necessary. Because no personal representative exists in this matter, substituting an heir is appropriate and necessary to continue these proceedings on Dr. Wallace's behalf. *See* Tex. R. Civ. P. 151. Juan Wallace, Dr. Wallace's daughter, desires to exercise her authority as an heir to continue Dr. Wallace's claim in this litigation under her own name. Dr. Wallace committed decades to civil rights advocacy on behalf of disenfranchised African-American communities and voters in Texas, including her service during this litigation as president of the Dallas NAACP, and joined this action to protect the right of African-American voters to be free from discrimination in the electoral process. Am. Compl. ¶¶ 7, 57. Dr. Wallace undertook this fight not just on her own behalf, but also for the larger benefit of African-American voters in the Dallas area. As her daughter and heir, Juan Wallace has the statutory authority to continue Dr. Wallace's fight and is committed to doing so until there is a final disposition in this case.

STATEMENT OF COMPLIANCE WITH FEDERAL AND LOCAL RULES

As required by Federal Rule of Civil Procedure 25(a)(3), Juan Wallace respectfully moves the Court for a hearing on this Motion, although Movant's position is that the matter can be decided on the papers. In accordance with Rule 25(a)(3) and Local Rule CV-7(g), a statement noting death and a proposed order will be filed and served on the parties along with this Motion.

CONCLUSION

The Court should grant the Motion to Substitute and permit Juan Wallace to replace her mother, Dr. Wallace, as NAACP Plaintiff-Intervenor in this action.

Dated: March 24, 2017.

Respectfully Submitted,

/s/ Allison J. Riggs

Allison J. Riggs
N.C. State Bar No. 40028
(Admitted Pro Hac Vice)
Anita S. Earls
N.C. State Bar No. 15597
(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
Attorneys for Plaintiff-Intervenors Texas State
Conference of NAACP Branches, Juanita Wallace,
and Bill Lawson, and Proposed Plaintiff-Intervenor
Juan Ivett Wallace

/s/ Gary L. Bledsoe

Gary L. Bledsoe
Law Office of Gary L. Bledsoe and Associates
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 Plaintiff-Intervenor Howard Jefferson

Robert Notzon
Law Office of Robert S. Notzon
State Bar Number 00797934
1502 West Avenue
Austin, TX 78701

512-474-7563

512-852-4788 fax

Robert@NotzonLaw.com

Attorney for Plaintiff-Intervenors Texas State
Conference of NAACP Branches, Juanita Wallace,
and Bill Lawson, and Proposed Plaintiff-Intervenor
Juan Ivett Wallace

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

Attorney for Plaintiff Texas State Conference of
NAACP Branches

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Texas NAACP Plaintiffs conferred with counsel for Defendants State of Texas, et al., on March 23, 2017 regarding their position on this motion and Counsel for Defendants responded on March 24, 2017, that they oppose the motion.

/s/ Allison J. Riggs

Allison J. Riggs
Attorney for Plaintiff-Intervenors Texas State
Conference of NAACP Branches, Juanita Wallace,
and Bill Lawson, and Proposed Plaintiff-Intervenor
Juan Ivett Wallace

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 March 24, 2017:

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

GERALD H. GOLDSTEIN
State Bar No. 08101000
ggandh@aol.com
DONALD H. FLANARY, III
State Bar No. 24045877
donflanary@hotmail.com
Goldstein, Goldstein and Hilley
310 S. St. Mary's Street
29th Floor, Tower Life Bldg.
San Antonio, TX 78205-4605
210-226-1463
210-226-8367 (facsimile)

PAUL M. SMITH
psmith@jenner.com
MICHAEL B. DESANCTIS
mdesantctis@jenner.com
JESSICA RING AMUNSON
jamunson@jenner.com
Jenner & Block LLP
1099 New York Ave., NW
Washington, D.C. 20001
202-639-6000
Served via electronic mail

J. GERALD HEBERT
191 Somerville Street, # 405

garzpalm@aol.com

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

**ATTORNEYS FOR MEXICAN AMERICAN
LEGISLATIVE CAUCUS**

NINA PERALES
Texas Bar No. 24005046
nperales@maldef.org
MARISA BONO
mbono@maldef.org
REBECCA MCNEILL COUTO
rcouto@maldef.org
Mexican American Legal Defense
and Education Fund
110 Broadway, Suite 300
San Antonio, TX 78205
(210) 224-5476
(210) 224-5382 (facsimile)

MARK ANTHONY SANCHEZ
masanchez@gws-law.com
ROBERT W. WILSON
rwwilson@gws-law.com
Gale, Wilson & Sanchez, PLLC
115 East Travis Street, Ste. 1900
San Antonio, TX 78205
210-222-8899
210-222-9526 (facsimile)

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

Alexandria, VA 22304
703-628-4673
hebert@voterlaw.com
Served via electronic mail

JESSE GAINES
P.O. Box 50093
Fort Worth, TX 76105
817-714-9988

**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**

MATTHEW HAMILTON FREDERICK
matthew.frederick@oag.state.tx.us
ANGELA V. COLMENERO
angela.colmenero@oag.state.tx.us
ANA M. JORDAN
ana.jordan@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)

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**

JOHN T. MORRIS
5703 Caldicote St.
Humble, TX 77346
(281) 852-6388
johnmorris1939@hotmail.com
Served via electronic mail

JOHN T. MORRIS, PRO SE

MAX RENEH HICKS
Law Office of Max Reneh 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 DEFENDANTS
STATE OF TEXAS, RICK PERRY, HOPE
ANDRADE, DAVID DEWHURST, AND
JOE STRAUS**

DONNA GARCIA DAVIDSON
PO Box 12131
Austin, TX 78711
(512) 775-7625
(877) 200-6001 (facsimile)
donna@dgdlawfirm.com

FRANK M. REILLY
Potts & Reilly, L.L.P.
P.O. Box 4037
Horseshoe Bay, TX 78657
512/469-7474
512/469-7480 (fax)
reilly@pottsreilly.com

**ATTORNEYS FOR DEFENDANT STEVE
MUNISTERI**

DAVID ESCAMILLA
Travis County Asst. Attorney
P.O. Box 1748
Austin, TX 78767
(512) 854-9416
david.escamilla@co.travis.tx.us
Served via electronic mail

**ATTORNEY FOR PLAINTIFF TRAVIS
COUNTY**

KAREN M. KENNARD
2803 Clearview Drive
Austin, TX 78703
(512) 974-2177
512-974-2894 (fax)
karen.kennard@ci.austin.tx.us
Served via electronic mail

**ATTORNEY FOR PLAINTIFF CITY OF
AUSTIN**

JOAQUIN G. AVILA

**ATTORNEYS FOR INTERVENOR-
DEFENDANTS TEXAS DEMOCRATIC
PARTY and BOYD RICHIE**

STEPHEN E. MCCONNICO
smcconnico@scottdoug.com
SAM JOHNSON
sjohnson@scottdoug.com
S. ABRAHAM KUCZAJ, III
akuczaj@scottdoug.com
Scott, Douglass & McConnico
One American Center
600 Congress Ave., 15th Floor
Austin, TX 78701
(512) 495-6300
512/474-0731 (fax)

**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**

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**

/s/ Allison J. Riggs
Allison J. Riggs
**Attorney for Plaintiff-Intervenors Texas
NAACP, Bill Lawson, and Juanita
Wallace, and Proposed Plaintiff-
Intervenor Juan Wallace**

/s/ Gary L. Bledsoe
Gary L. Bledsoe
**Attorney for Plaintiff-Intervenor Howard
Jefferson**