

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>	)	

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AFRICAN-AMERICAN CONGRESSPERSON’S PLAINTIFF-INTERVENORS’  
ADVISORY TO THE COURT

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The African-American Congresspersons, Plaintiff-Intervenors in this Cause, submit this advisory pursuant to this Court’s order on April 5, 2017 (ECF No 1352).

**I. Introduction**

After lawsuits were filed in 2011, this matter has gone through several trials. We understand the Court to inquire about what matters, if any, the parties may still desire to address in the 2013 plan after its decision on the 2011 map. The 2013 map made several changes, including some, but not all, changes requested by the African-American Congresspersons. The 2013 map repaired some of the problems with the 2011 map but did not adequately address all of the issues that were raised involving the 2011 map and those matters have been raised in the pleadings challenging the 2013 map. As a result, the African-American Congressional Intervenors do have pending claims against the 2013 Congressional plan. The African-American Congressional Intervenors, along with other private plaintiffs, believe that entry of a permanent

injunction and remedial plan immediately, then followed by a trial on the merits, is the best way to ensure that a remedy is in place before the 2018 elections.

It is further essential to have such a remedial hearing to see what remedies are permitted under the Court's decision of April 5<sup>th</sup> before one will fully know what issues must still be litigated under the 2013 map. African-American Congressional Intervenors would ideally like such a proceeding to be set no earlier than June 27, 2017 and no later than the third week in July. A quick remedial hearing might be the only chance to ensure that a remedy is place before the 2018 elections, and voters need to be assigned to constitutional districts before that election, the first benchmarks of which begin early this fall if a compression of the election schedule (or extension of election deadlines) is to be avoided.

It is our sincere opinion that the trial on the 2013 maps will involve a shorter trial than regarding the 2011 map if a remedial hearing is held. At such a remedial hearing, we believe that only limited expert testimony relating to proposed remedial maps and what it would take to cure the 2011 violations this Court identified would be necessary. The Court would not need to consider all of the plaintiffs' 2013 evidence, but focus in on where the already-identified 2011 violations persist in the 2013 plans.

## **II. Claims Being Pursued with Regard to the 2013 Plans**

When the 2013 Congressional and State House cases are tried, these are the claims that the African-American Congresspersons 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**

- The newly adopted 2013 Legislative Plan (the Interim Plan previously) corrected many of the problems raised regarding Congressional District 9 and Congressional District 18. However, it fell far short of correcting the problems in CD 30. This district was drawn in a manner that undermines the ability to provide proper representation in the Motorplex to African-American or Latino voters. Subject to this description we believe the following matters would be at issue:
  - 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 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, nor does it remedy the fracturing of Latino voters in the region.
- Harris County
  - The African-American Congresspersons are studying whether to move forward with claims in regards to Harris County, but can say to the court at this point that they believe the current configurations in CD9 and CD18 are appropriate and are not in need of any changes.

**b. Types of Evidence Needed for Trial**

With respect to the Section 2 effects claims the African-American Congressional Intervenor intend to pursue in their challenge to the 2013 Congressional plan, we will have to put on at trial additional expert and lay testimony at trial. Specifically, new demonstrative maps will be provided to the Court to establish that we 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 African-American Congressional Intervenor will present expert testimony on racially polarized voting and, in any coalition district sought to be established, testimony on political cohesion. There have been two general elections since the last trial, so there are a substantial number of electoral races to examine. The African-American Congressional Intervenor desire to supplement their analysis of political cohesion in Dallas-Fort Worth, particularly in a manner as suggested by the court's opinion. Also, the African-American Congresspersons believe it is important to provide lay testimony on cohesion and totality of the circumstances that the court must consider in assessing our claims.

With respect to claims of intentional discrimination under the Fourteenth Amendment and Section 2 of the Voting Rights Act, the African-American Congressional Intervenors anticipate need for some testimony from documentary discovery, and testimony from legislators and others who participated in the 2013 legislative process. Because there are many overlapping claims the African-American Congressional Intervenors believe that the lists of witnesses might be reduced by agreement with other private plaintiff parties.

It is our hope that some evidence can be stipulated to but this of course would require the State and other parties to agree. It is important to note that there were previous stipulations and we would hope that such matters as stipulated then might be stipulated to now. Election Returns, Official records of Legislative Proceedings, public statements of state officials, election returns, and TLC reports seem to be matters that are clearly relevant and that should not be in dispute. However, any such stipulations may cause for a short lessening of trial time.

The African-American Congressional Intervenors believe that if a remedial plan is not forthcoming soon regarding the 2011 map violations, the likelihood of an illegal and unconstitutional map or configurations within a map being used again greatly increases. The African-American Congressperson believe that judicial efficiency and economy will be greatly furthered by having the remedial plan on the 2011 decision before proceeding to any trial or hearing on the 2013 map, but would suggest the same trial dates as it has proposed.

Dated: April 24, 2017.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent via the Court's  
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