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CAUSE NO. 11-20238-CV

THE HONORABLE JOE BARTON, THE §  
HONORABLE FRANK STEED, AND §  
CHARLES WASHBURN, §  
PLAINTIFFS, §

IN THE DISTRICT COURT

v.

THE STATE OF TEXAS, AND THE §  
HONORABLE HOPE ANDRADE, IN HER §  
OFFICIAL CAPACITY AS SECRETARY OF §  
STATE, §  
DEFENDANTS §

OF NAVARRO COUNTY

2011 MAY 23 AM 8:00  
JOE R. HOBBS  
DISTRICT CLERK  
NAVARRO COUNTY, TX  
13<sup>TH</sup> JUDICIAL DISTRICT

FILED

**Original Petition**

To the Honorable Court:

The Honorable Joe Barton, The Honorable Frank Steed, and Mr. Charles Washburn, Plaintiffs herein and complain of the State of Texas and the Honorable Hope Andrade, in her official capacity as Secretary of State, Defendants herein, and seek declaratory and injunctive relief as further set forth herein concerning enforcement of voting rights guaranteed them by the Texas Constitution. In support of this petition, the plaintiffs respectfully show as follows:

**Discovery**

1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4.

**Parties**

2. Plaintiff, The Honorable Joe Barton, is a duly elected Member of the United States House of Representatives representing the 6<sup>th</sup> Congressional District of Texas and a registered voter in the State of Texas.

3. Plaintiff, The Honorable Frank Steed, is the duly elected Republican Party Chairman of Navarro County and a registered voter in the State of Texas. Chairman Steed resides at 3514 Francisco Bay Drive, Kerens, Navarro County, Texas.

4. Plaintiff, Mr. Charles Washburn, is a registered voter in the State of Texas and resides at 1000 Bryn Mawr Avenue, Corsicana, Navarro County, Texas.

5. Defendants are the State of Texas and The Honorable Hope Andrade, in her official capacity as the Secretary of State, and are responsible under the laws of the state to oversee the conduct of elections and may be served with process at 1100 Congress Avenue, Room E1.8, Austin, Travis County, Texas 78701.

#### **Jurisdiction and Venue**

6. The events, omissions, and relief sought in this case are within the jurisdiction of the Court.

7. Venue is proper in Navarro County under Texas Civil Practice & Remedies Code §15.002 because Plaintiffs Steed and Washburn are natural persons who were residing in Navarro County at the time of the accrual of the cause of action herein.

#### **Facts**

8. On or about February 17, 2011, the United States Department of Commerce and the United States Census Bureau released to the State of Texas the population data gathered as a result of the 2010 census.

9. The information released to the State of Texas showed that the population of Texas had increased to 25,145,561 for 2010. The population of Texas, according to the 2010 Census, had thus increased over the decade by about 20% from a population of 20,851,820 in 2000.

10. The numbers released to the State of Texas by the Census Bureau were used to apportion United States House of Representatives seats to Texas. The State of Texas is entitled to 36 congressional representatives, an increase of four representatives since the 2000 Census.

11. The Texas Legislative Council, an agency of the Defendant State of Texas responsible for providing technical assistance to state officials on redistricting matters, has estimated that the ideal population total for each congressional district following the release of the 2010 census figures is 698,488.

12. The Defendant State of Texas has acknowledged that the current congressional districts are malapportioned. For example, the Texas Legislative Council has issued population data for each of the state's current congressional districts detailing the extent of the malapportionment.

13. According to the 2010 Census, the Texas congressional districts have population disparities between the most populated and least populated districts of 48.81%. This population disparity far exceeds the allowable deviation under the Texas Constitution. The overpopulated

districts for the United States House of Representatives include districts such as Congressional District 6, which includes Navarro County, with a deviation of +15.84%.

14. The Texas Legislature convened in their regular biennial session on Tuesday, January 11, 2011 and adjourns *sine die* on Monday, May 30, 2011. TEX. CONST. ART. III, SEC. 24(b).

15. The legislative session is the appropriate opportunity for the Defendant State of Texas, through its Legislature, to enact a legally valid congressional redistricting plan to address the current malapportionment of which plaintiffs complain here.

16. On or about January 3, 2011, State Senator Kel Seliger, Chairman of the Senate Select Committee on Redistricting, filed SB 307 relating to the composition of the congressional districts for the State of Texas. The legislation was scheduled for a public hearing on May 19, 2011 but the meeting was subsequently canceled and no action has taken place on the measure to date.

17. On or about March 8, 2011, State Representative Burt Solomons, Chairman of the House Committee on Redistricting, filed HB 900 relating to the composition of the congressional districts for the State of Texas. To date, no action has been taken by the Texas Legislature on the measure.

18. Monday, May 9, 2011 was the 119<sup>th</sup> day of the legislative session and the last day for a House committee to report House bills out of committee for consideration by the full House. HOUSE RULE 6, SEC. 16(a) AND HOUSE RULE 8, SEC. 13(b). Therefore, the House Committee on Redistricting cannot pass HB 900.

19. Saturday, May 22, 2011 was the 131<sup>st</sup> day of the legislative session and the last day for a House committee to report Senate bills for consideration by the full House. HOUSE RULE 6, SEC. 16(a) and HOUSE RULE 8, SEC. 13(c). Therefore, the House Committee on Redistricting cannot act upon SB 307 which is still pending in the Senate Select Committee on Redistricting.

20. The Texas Legislature has deadlocked over congressional redistricting and has failed to enact a new plan during the regular legislative session.

21. The failure of the Defendant State of Texas to enact a new congressional redistricting plan in the 2011 session requires this Court to order a new congressional redistricting plan into effect for the post-2010 election cycle that contains substantially the same number of persons in each congressional district and meets the requirements of state and federal law.

### **Cause of Action**

#### **Violation of Equal Protection Provision of the Texas Constitution**

22. The facts alleged herein constitute a denial to Plaintiffs of "equal rights" as guaranteed to them by Article I, Section 3, of the Texas Constitution.

23. Defendant, The Honorable Hope Andrade, in her official capacity as Secretary of State is responsible for ensuring that all election procedures comply with the Texas Constitution. TEX. ELEC. CODE §31.001. The Constitution requires that equality of rights include political rights. *Burroughs v. Lyles*, 181 S.W.2d 570, 574 (Tex. 1944). Moreover, it requires that election districts have as equal population as is practicable. *Avery v. Midland County, Tex.* 430 S.W.2d 487 (Tex. 1968)(on remand from *Avery v. Midland County, Tex.* 390 U.S. 474 (1968)).

24. The plan currently in place for the United States House of Representatives have impermissible population deviations between their largest and smallest districts in violation of Plaintiffs' rights as protected by Article I, Section 3, of the Texas Constitution.

25. Additionally, Article VI, Section 2(c), of the Texas Constitution provides that "...suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties all undue influence in elections from power, bribery, tumult, or other improper practice." Failure to comply with Article I, Section 3, of the Texas Constitution, as alleged in this suit, is a violation of this provision.

#### **Request for Declaratory Relief**

26. This suit involves an actual controversy within this Court's jurisdiction, and the Court should, as authorized by the Uniform Declaratory Judgments Act, declare the violation of Plaintiffs' rights under the Texas Constitution, and declare the suffrage rights of Plaintiffs under the Texas Constitution, and require enforcement of the same. TEX CIV. PRAC. & REM. CODE §37.003.

#### **Request for Temporary and Permanent Injunctive Relief**

27. Defendant State of Texas has violated Plaintiffs' fundamental state constitutional rights in its failure to enact new congressional districts and continues to do so.

28. Without injunctive relief by the Court, Defendants will continue to violate Plaintiffs' constitutional rights, for which there is no adequate relief in damages.