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. 11-CA-360-OLG-JES-XR [Lead Case]

MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES, Plaintiffs, v. STATE OF TEXAS, et al., Defendants.	§ § § § § § § §	CIVIL ACTION NO. SA-11-CA-361-OLG-JES-XR [Consolidated Case]

TEXAS LATINO REDISTRICTING TASK FORCE, et al., Plaintiffs, v. RICK PERRY, Defendant.	§ § § § § §	CIVIL ACTION NO. SA-11-CA-490-OLG-JES-XR [Consolidated Case]

MARGARITA V. QUESADA, et al., Plaintiffs, v. RICK PERRY, et al., Defendants.	§ § § § § §	CIVIL ACTION NO. SA-11-CA-592-OLG-JES-XR [Consolidated Case]

EDDIE RODRIGUEZ, et al.,	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO.
	§	SA-11-CA-635-OLG-JES-XR
RICK PERRY, et al.,	§	[Consolidated Case]
Defendants.	§	

REPLY TO STATE'S RESPONSE TO CONDITIONAL MOTION FOR PRELIMINARY INJUNCTION

The LULAC plaintiffs, NAACP plaintiffs, Perez plaintiffs, Quesada plaintiffs, and Rodriguez plaintiffs (collectively, "movants") reply to the state defendants' response (Docs. 1321 & 1322) in opposition to the movants request for a preliminary injunction.

I. THE STATE'S RESPONSE TELLINGLY DISREGARDS THE BAIL-IN ISSUE.

The State provides no rebuttal at all to the movants' explanation that the 2013 plans cannot be further implemented because of the likelihood that movants will succeed in their bail-in argument. *See* Conditional Motion, Part A.2 at 3-4 (Docs. 1319 & 1320). The State argues that there has not yet been a full trial on the 2013 plans, but that argument is irrelevant to the bail-in issue. It is undisputed that the legality of the 2011 House and Congressional plans has been fully tried. The movants, along with others, explained in their 2014 post-trial briefing that the evidence in the 2011 merits trials establishes "violations of the fourteenth or fifteenth amendments justifying equitable relief," 52 U.S.C. § 10302(c). If the Court agrees, then the bail-in provision of the Voting Rights Act instructs the Court to "retain jurisdiction" for a period deemed appropriate. *Id.* During this period of retained jurisdiction, the State is legally barred from implementing electoral

changes different than those in effect "at the time the proceeding was *commenced*." *Id.* (emphasis added).

This proceeding was commenced in the summer of 2011. The State concedes—even insists—that its 2013 House and Congressional plans are different from the ones in effect in 2011. Consequently, if the movants have established violations of the Fourteenth or Fifteenth Amendments in the 2011 House and Congressional plans, 52 U.S.C. § 10302(c) prohibits the State from implementing the 2013 plans until and unless it has demonstrated to the Court that those plans do not have the purpose *or* effect of denying or abridging the right to vote on account of race or color.

The movants have met their burden in proving the discriminatory intent behind the 2011 redistricting plans, and they are entitled to bail-in relief. And with that relief, the State has not met its burden to demonstrate that the 2013 plans are non-retrogressive. This point is completely missed in the State's response. And, particularly in light of the principles expressly stated in Section 10302(c) for protecting minority voting rights, the movants have also met the three other prerequisites for obtaining a preliminary injunction.

II. THERE IS SUFFICIENT EVIDENCE IN THE TRIAL RECORD TO MAKE A LIKELIHOOD OF SUCCESS DETERMINATION FOR LARGE SWATHS OF THE 2013 MAPS.

In light of the bail-in issue, the Court does not have to reach at this time the constitutional and statutory issues concerning the 2013 plans for House and Congressional seats. But, if it were to do so, there is ample evidence in the record thus far to issue a preliminary injunction as to their implementation. The State's primary focus on this issue is that the 2013 plans differ from the 2011 plans and, since a full evidentiary hearing on the 2013 plans has yet to occur, there is insuffi-

cient evidence at this time for the movants to show a likelihood of success on the merits of the direct challenges to the 2013 plans. *See* State Resp. at 3.

But the 2013 House and Congressional plans are identical to the 2011 plans in many areas under challenge. The 2011 and 2013 House plans are the same for districts under challenge in Fort Bend, Nueces, Bell, and McLennan Counties and virtually the same for challenged districts in Dallas, Tarrant, and Harris Counties. The 2011 and 2013 Congressional plans are the same for challenged districts such as CD35 and the South Texas envelope/Nueces County areas.

As to all these areas, there is ample evidence in the record from the evidentiary hearings that have been held thus far for the Court to conclude that the movants have established a likelihood of success on the merits of their challenges to these parts of the map. Even as to CD23 as reconfigured in the 2013 Congressional map, the Court has sufficient evidence before it to make a preliminary injunction determination.[1]

The State's response also falters in its rather confusing assertion that "[i]t is not plausible that every plaintiff faces an imminent threat to his or her fundamental rights." State Resp. at 5-6. The movants are in every challenged district and area.[2] It is beyond dispute that voters who reside in discriminatorily-drawn districts that will dilute the strength of their votes are irreparably and immediately harmed when an election is conducted under those districts.

Finally, it should be understood that, contrary to the State's argument, there is sufficient time to put in place at least an interim plan for the 2016 election cycle. It is nearly two months

[1] For example, Dr. Ansolabehere's report and testimony in the August 2014 trial addresses the version of CD23 in the 2013 map and questions whether it performs as a Latino opportunity district. In contrast, the State has no evidence whatever to support its apparent insinuation that Latino voters in 2014 preferred the successful Republican candidate. *See* State Resp. at 5 ("[t]o the extent Hispanic voters in CD 23 . . ."

[2] There are NAACP plaintiffs, LULAC plaintiffs, and the Perez plaintiffs in each of the challenged House districts and areas. The same goes for those plaintiffs, as well as the Quesada plaintiffs and the Rodriguez plaintiffs, and Congressional districts and areas. *See, e.g,* Prop. FF/CL (Doc. 1277-1) ¶¶ 14-37; Mendoza Decl. (Doc. 1302-1) ¶¶ 5-7.

until candidate qualifying for party primaries would close under the current State schedule. The Texas Legislature has further stretched the length of the primary season, extending it by more than a month. Primaries will not close until May 24, 2016, the new, later date for primary run-offs. Under an even tighter schedule in 2012, the Court was able to fashion interim plans using something less than a full evidentiary hearing.[3]

CONCLUSION

The Court should preliminarily enjoin further implementation of the 2013 House and Congressional plans, as prayed for in the conditional motion for a preliminary injunction.

Respectfully submitted,

*__/s/ Luis R. Vera, Jr.*_____
LUIS ROBERTO VERA, JR.
LULAC National General Counsel
Law Offices of Luis Roberto Vera, Jr. & Assoc.
1325 Riverview Towers 111 Soledad
San Antonio, TX78205
(210) 225-3300
lrvlaw@sbcglobal.net

Counsel for LULAC Plaintiffs and Perez Plaintiffs

*_/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

[3] In 2012, the Court solicited critical comments rather than receive evidence on a proposed compromise plan.

Allison@southerncoalition.org

Attorneys for Texas State Conference of NAACP Branches, Juanita Wallace and Bill Lawson

*_/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 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 Texas State Conference of NAACP Branches, Juanita Wallace and Bill Lawson

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 the Texas State Conference of NAACP Branches

Gerald H. Goldstein
Donald H. Flanary, III
Goldstein, Goldstein and Hilley

310 S. St. Mary's Street 29th Floor Tower Life Bldg.
San Antonio, Texas 78205
Phone: (210) 226-1463

Paul M. Smith
Michael B. DeSanctis
Jessica Ring Amunson
Jenner & Block LLP
1099 New York Ave., N.W.
Washington, D.C. 20001
Tel: (202) 639-6000

/s/ J. Gerald Hebert
J. Gerald Hebert
191 Somervelle Street, #405
Alexandria, VA 22304
(703) 628-4673

Attorneys for the Quesada Plaintiffs

*__/s/ David Richards*_____
David Richards
State Bar No. 16846000
Richards, Rodriguez & Skeith, LLP
816 Congress Avenue, Suite 1200
Austin, Texas 78701
(512) 476-0005
fax (512) 476-1513
DavidR@rrsfirm.com

Attorney for Perez Plaintiffs

*__/s/ Renea Hicks*_____
Attorney at Law
State Bar No. 09580400
Law Office of Max Renea Hicks
101 West 6th Street
Austin, Texas 78701
(512) 480-8231 - Telephone
(512) 480-9105 - Facsimile
rhicks@renea-hicks.com

ATTORNEYS FOR PLAINTIFFS EDDIE

RODRIGUEZ, ET AL., TRAVIS COUNTY, AND CITY OF AUSTIN

PERKINS COIE LLP
Marc Erik Elias
Admitted Pro Hac Vice
700 Thirteenth Street N.W., Suite 600
Washington, DC 20005-3960
(202) 434-1609
(202) 654-9126 FAX
MElias@perkinscoie.com

Abha Khanna
Admitted Pro Hac Vice
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
(206) 359-8312
(206) 359-9312 FAX
AKhanna@perkinscoie.com

ATTORNEYS FOR PLAINTIFFS EDDIE RODRIGUEZ, *ET AL.*

David Escamilla
Travis County Attorney
State Bar No. 06662300
P.O. Box 1748
Austin, Texas 78767
(512) 854-9416
fax (512) 854-4808

Attorney for Plaintiff Travis County

Anne L. Morgan
Interim City Attorney
State Bar No. 14432400
P.O. Box 1088
Austin, Texas 78767-1088
(512) 974-2507
fax (512) 974-6490

Attorney for Plaintiff City of Austin

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of October, 2015, I filed a copy of the foregoing for service on counsel of record in this proceeding through the Court's CM/ECF system.

__/s/ Renea Hicks_____
Renea Hicks