

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]

**PEREZ PLAINTIFFS' MEMORANDUM CONCERNING
HARRIS V. ARIZONA INDEPENDENT REDISTRICTING COMMISSION'S DECISION**

The Perez Plaintiffs tender this memorandum in response to the Court's order allowing comment upon the Supreme Court's opinion in *Harris v. Arizona Independent Redistricting Commission*, a unanimous opinion of the Court. This brief will be confined to deviation issues. We and other parties in earlier briefs have addressed other deficiencies in the House Plan.

Harris Opinion

The *Harris* opinion may be helpful on several points. First, it sums up the obligation of the state under the 14th Amendment in redistricting its legislative bodies: It "requires States to 'make an honest and good faith effort to construct [legislative] districts . . . as nearly of equal population as is practicable.'...The Constitution, however, does not demand mathematical perfection. In determining what is 'practicable,' we have recognized that the Constitution permits deviation when it is justified by 'legitimate considerations incident to the effectuation of a rational state policy.'" (Slip Op. at 3.)

Two requirements emerge from this formulation:

- (1) Good faith effort to create districts as nearly of equal population as is practicable.

(2) “Practicable” contemplates deviation only when justified by “legitimate considerations” effectuating “rational state policy”.

Let’s look first at the “good faith effort” requirement and focus on the “drop in” counties whose redistricting is unaffected by the county line rule. These counties account for 69 House seats. We know that no effort – good or bad – was made to achieve equality of population in those counties. Their members were simply told to stay within a 10% deviation.

Interiano, lead staffer on House Redistricting, testified (2011 Tr. Vol. 6 at 1418.):

Q. As I understand it in drawing the House map, Plan 283, you were operating -- you were operating under the assumption that as long as you were within a 10 percent deviation you were okay; is that correct?

A. Yes.

Q. And there was no effort made to minimize the deviations within the counties that had whole districts wholly contained within the county?

A. I think that was up to the delegations...

(2011 Tr. Vol. 6 at 1473-74.)

Leaving it up to the delegations resulted in a deviation in Harris County of 9.88%, in Dallas County 8.88%, and in Bexar County 9.36%, in Tarrant County 6.73%. Obviously not the product of “good faith effort” toward equality.

Well, are these deviations a result of “legitimate considerations incident to the effectuation of a rational state policy?”

The legislators were advised by their expert, David Hanna that they should insure “that all deviations are justified by a legitimate consistently applied policy.” (Perez Ex. 132.) His advice was totally ignored and no articulation of a “rational state policy” has ever emerged. Not through

days of hearings and volumes of briefs. Of course, the only “consistently applied purpose” in House Redistricting was partisanship, i.e. the election of Republican candidates, “protecting Republican incumbents was a partisan goal in all of these maps.” (Perez Ex. 136.)

The Supreme Court in *Harris* assumed “without deciding” that partisanship is an “illegitimate redistricting factor.” (Slip at 10.) If this Court concludes in reliance on *Cox v. Larios*, that partisanship is not a legitimate redistricting factor, then it follows that the redistricting plans of Dallas, Harris, Bexar and Tarrant Counties must fail. For it is beyond question that no effort, good faith or otherwise, was made to achieve population equality among the districts in those counties.

Even if this Court concludes not to follow *Cox v. Larios*, there are ample reasons to reject significant portions of HB 283. The record reflects one aspect of the impact of the deviation in the House Plan in the testimony of Dr. Kousser:

“...the districts have wide population disparities that are strongly correlated with partisan and racial concentrations. More minority than Anglo districts are overpopulated, both in the state as a whole and within the large urban counties.’ (Kousser Declaration at 106, Joint Ex. 2.) He testified that ‘the population disparities are clearly correlated with partisanship and ethnicity. Latinos are disproportionately disadvantaged...the plan’s deviations were not justified and they more heavily burdened Latinos.’ (Tr. Vol. 1 at 249.)”

Throughout the House redistricting process, race and ethnicity were used as a proxy for partisanship in an effort to create Republican districts. The most egregious examples are districts 41 in Hidalgo and 105 in Dallas. House District (“HD”) 41 was drawn in an effort to save Representative Pena who had recently switched to the Republican party and HD 105 was created to save a Republican seat after Dallas County lost two House seats. Maps of these districts are attached as **Exhibit A** and the configurations tell the tale. The bizarre configuration of HD 105 is explained by the map drawers’ determination not to leave Republican Anderson “in a heavily

Democratic District...so we tried to draw him into 105.” (Tr. Vol. 4 at 927.) (See also Interiano Depo. At 35-36). This arrangement resulted in packing Hispanics into HD 103 and making it the most overpopulated district in Dallas County. Similarly, the deviations in HD 41 condemn the plan. Population deviations within Hidalgo are as follows: HD 41 is underpopulated by 7,399 persons, adjoining HD 36 and 40 respectively overpopulated by 4,368 and 5,856 persons.

We will briefly examine individual counties with an eye toward the *Harris* opinion and believe it to be clear that no “legitimate considerations” explain the deviations present in these counties. First, in *Arizona*, the defendant offered some plausible explanation for the deviations. None was offered by Defendants here with respect to these counties. Indeed, Kousser’s testimony established that the overpopulated districts were minority districts. We show below, and the attached maps demonstrate that “compactness” does not explain the deviations that emerge. There is simply no evidence that legitimate factors explain the deviations.

Dallas County

Quite aside from the glaring deviation issues in west Dallas County in HDs 105 and 103, similar issues arise in the north eastern part of the county, where a significant minority population is split between 5 Anglo dominated HDs, 107, 112, 102, 113 and 114, with inexplicable deviations. HD 102 is underpopulated by 6,501 persons while adjoining HD 114 is overpopulated by 4,693. Rational purposes is equally negated by the dismembering of the City of Mesquite which had been essentially in a single district since the 1970’s and elected minority candidate of choice in 2008. The House Bill split the city sending minority residents in different directions. (Korbel Report at 11.) Unjustified deviations denied equal protection to minority population in HDs 102, 105, 107 and 113.

Harris County

Harris County was losing a district and the Republicans were told to draw their own districts and the Democrats were told they could not touch the Republican drawn districts.

Aside from the deficiencies in HD 149, the Court has noted earlier, the deviation issues and the contorted configurations of many of the districts bely any legitimate purpose.

The ideal population size in Harris County, with 24 districts, is 170,519. Harris County went from 25 to 24 districts. Population growth/loss patterns suggested that a district should be removed from the vastly under-populated east end of the county. But, all four Anglo controlled districts were preserved there (HDs 144, 127, 128 and 129) using systematic under population.

The systematic under population of six of eight contiguous districts on the east end of the county allows the continued Anglo domination of four districts. Black controlled HDs 141 and 142 are at 166,498 and 159,541, respectively. Hispanic majority HD 143 is under populated at 162,482. (Hispanic HD 145 uses a narrow arm to get to population in central Harris to get just above county average deviation at 170,821). The protected Anglo controlled districts are HDs 127 (163,983), 128 (168,551), 129 (171,751) and 144 (161,878). Continued Anglo domination of HD 144 was illegal.

On the West end of the county, where the district loss occurred, six minority districts were heavily packed and severely overpopulated: HD 131 at 175,227; HD 146 at 174,485; HD 147 at 175,873; HD 139 at 175,733; HD 148 175,324 and HD 137 at 173,598.

The Anglo controlled HDs 126, 136 and 150 are under populated at 168,256, 166,543 and 168,735, respectively.

This population deviation pattern on the west end of the county (combined with cracking discussed elsewhere in the record) illegally allowed for continued Anglo control of a maximum

number of districts including HDs 132 and 135; and the elimination of HD 149. Equal protection denied in HDs 132, 135 and 149.

Our record contains no cogent, or even plausible explanation for these deviations, certainly no suggestion that they are the product of a legitimate state policy.

Tarrant County

Tarrant County gained a legislative seat but despite the significant minority growth, did not gain a minority seat, explained by the odd configuration of HD 93, a “Fish Hook...which runs from the heavily Anglo northwestern part of the county to the mid-cities area which has become heavily minority...District 93 plucks several heavily minority precincts from the mid-cities and ties them in which the suburban Northern portion of the county.” (Korbel Report at 13.) Even with this tortured configuration, the District is underpopulated by 3.27%.

Bexar County

The court, and other parties, has identified constitutional failures in the Bexar House Plan. The deviation within the county also presents serious 14th Amendment issues. There is an unexplained top to bottom deviation of 9.36%.

Bell and McLennan Counties

These counties present a somewhat different picture, but the result is essentially the same. The abandonment of “legitimate considerations” i.e., “maintaining the integrity of political subdivisions.” (Slip. Op. at 4.) In both counties, the state plan fragmented for the first time the cities of Killeen and Waco, both of which had been historically essentially maintained in a single district. (Korbel Report, p. 6-10) These districts were redrawn for purely partisan purposes using the minority population as proxies for Democratic voters.

CONCLUSION

If indeed the state's obligation is to make a "good faith effort" to achieve population equality, it is ineluctable that the identified districts fail constitutional muster. It is equally clear that no legitimate policy has been articulated to justify the resulting deviations and bizarre configurations that infect the plan. In fact, under a partisan banner, population deviation was used to enable the packing and cracking of minority populations.

Respectfully submitted,

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