

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

SHANNON PEREZ, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	CIVIL ACTION NO.
)	SA-11-CA-360-OLG-JES-XR
v.)	
)	
STATE OF TEXAS, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

PLAINTIFFS’ JOINT MOTION FOR ENTRY OF A PERMANENT INJUNCTION AND
SCHEDULING ORDER FOR REMEDIAL PROCEEDINGS

The Texas NAACP Plaintiffs, the African American Congresspersons, MALC, the Rodriguez Plaintiffs, the Quesada Plaintiffs, the Texas Latino Redistricting Task Force, the Perez Plaintiffs, the LULAC plaintiffs, and Congressman Henry Cuellar, (hereinafter, “Plaintiffs”) respectfully move this Court to enter a permanent injunction of the current congressional redistricting plan, Plan C235, unless and until the portions of that plan that this Court determined on March 10, 2017 to be in violation of the Voting Rights Act or the Fourteenth Amendment are remedied. Plaintiffs further respectfully request the Court enter a scheduling order governing the remedial process that would afford relief in time for the 2018 elections. In support of this motion, Plaintiffs show the Court the following:

BACKGROUND

1. Plaintiffs filed the instant actions beginning on May 9, 2011, against the State of Texas and various Texas officials, seeking relief for alleged vote dilution and intentional

discrimination in the adoption and implementation of the 2011 Texas redistricting plans, including the congressional Plan C185.

2. On September 1, 2011, the Court held a two-week trial on the merits with regard to the Texas House and congressional redistricting plans.
3. In November 2011, the Court issued interim redistricting plans for the House, Plan H302, and for Congress, Plan C220. Docket nos. 528, 544.
4. Texas appealed. On January 20, 2012, the Supreme Court issued *Perry v. Perez*, 132 S. Ct. 934 (2012), which clarified the governing legal standards and vacated this Court's interim plans. In February 2012, this Court held a hearing on interim plan issues. On March 19, 2012, this Court entered a second set of interim plans for the Texas House, Plan H309, and Congress, Plan C235. Docket nos. 681, 682, 690 & 691.
5. On June 23, 2013, the State legislatively adopted Plan C235. After enactment of the court-ordered plan, the State formally sought to end this case with a motion to dismiss for mootness. This motion was denied by this Court on September 6, 2013.
6. In August, 2014, this Court heard an additional week of evidence relating to the 2011 congressional plan.
7. This Court issued its ruling on the congressional redistricting plan on Friday, March 10, 2017, holding several elements of the 2011 congressional plan violated the Voting Rights Act or the Fourteenth Amendment, and that some of these violations persisted in the current congressional redistricting plan C235. Order, Docket no. 1339, at 4-5, 47, 108, 145-46, 181 (Mar. 10, 2017) (hereinafter, "Op.").
8. Specifically, the Court held that "mapdrawers acted with an impermissible intent to dilute minority voting strength or otherwise violated the Fourteenth Amendment and that

Plaintiffs are still being harmed by the lines drawn as the direct product of these violations[.]” Op. at 4. The Court further held that, at the least, “Plaintiffs continue to be harmed by violations of the Voting Rights Act and Fourteenth Amendment in CD23, CD27, and CD35.” Op. at 4-5; *see also* Op. at 47. In addition to finding numerous violations of either the Voting Rights Act or the Fourteenth Amendment, the Court unanimously identified Fourteenth Amendment violations in how districts in the Dallas-Fort Worth (“DFW”) region were drawn, including both intentional vote dilution and *Shaw*-based racial gerrymandering violations. Op. at 108, 145-46, 181.

ENTITLEMENT TO INJUNCTION

9. After having proven many of the claims asserted at trial, Plaintiffs are entitled to a permanent injunction of the illegal and unconstitutional elements of the 2011 redistricting plan that persist in the 2013 plan, C235. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 552 (1964) (in a one person, one vote case, district court enjoined defendant “from holding any future elections under any of the apportionment plans that it had found invalid”).
10. The specific districts identified as violating the Voting Rights Act and the Fourteenth Amendment and the districts where intentional discrimination and/or racial gerrymandering infected the drawing of boundaries in violation of the Fourteenth Amendment must be remedied. The Fifth Circuit has recognized that the remedy for a discriminatory purpose violation is “potentially broader than the one to which Plaintiffs would be entitled if only the discriminatory effect claim were considered.” *Veasey v. Abbott*, 830 F.3d at 268. Potential remedies after a finding of purposeful discrimination include striking down the offensive law in its entirety. *Id.* at 268 (noting that “[a]n official action . . . taken for the purpose of discriminating . . . on account of . . . race has

no legitimacy at all” (quoting *City of Richmond v. United States*, 422 U.S. 358, 378 (1975)).

11. This Court’s findings necessitate the entry of an injunction and the development and implementation of a remedial plan. “[O]nce a State’s . . . apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan.” *Reynolds v. Sims*, 377 U.S. 533, 585 (1964).
12. A district court has “not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future.” *Louisiana v. United States*, 380 U.S. 145, 154 (1965); *see also Swann v. Charlotte-Mecklenburg Bd. of Education*, 402 U.S. 1, 15 (1971) (“Once a right and a violation have been shown, the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.”).
13. Delaying entry of an injunction following this Court’s finding that the 2011 congressional plan was illegal and unconstitutional, and that elements of these violations persist in C235, would unjustifiably risk forcing Plaintiffs, and, indeed, millions of Texans to elect members of Congress under a legally invalid plan. *See Harris v. McCrory*, Case No. 1:13-cv-949, 32016 WL 6920368, at *1 (“To force the plaintiffs to vote again under the unconstitutional plan . . . constitutes irreparable harm to them, and to the other voters in [the challenged districts.]”); *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 560 (E.D. Va. 2016) (same because delay in remedy “would be to give the Intervenors the fruits of victory for another election cycle, even if they lose in the Supreme Court. This we decline

to do.”); *Vera v. Bush*, 933 F. Supp. 1341, 1350 (S.D. Tex. 1996) (declining to stay remedy in light of constitutional violations in challenged plan); *Larios v. Cox*, 305 F. Supp. 2d 1335, 1344 (N.D. Ga. 2004) (same because “the practical effect of a stay would be that the State of Georgia would conduct the 2004 elections again using unconstitutional apportionment plans”); *Cane v. Worcester County, Md.*, 874 F. Supp. 687, 698 (D. Md. 1995) (same because “to delay to all citizens of the County their right to a voice in their government . . . is a significant harm”); *Cousins v. McWherter*, 845 F. Supp. 525, 528 (E.D. Tenn. 1994) (same because “to prolong the creation of a plan by the Legislature would only serve to prolong the harm that plaintiffs have suffered for many years”).

14. Indeed, even Defendants have acknowledged that “[u]nder the settled standards of the Fourteenth Amendment, plaintiffs . . . may secure a permanent injunction after proving liability.” Reply in Support of State Defendants’ Motion for Partial Summary Judgment, Docket no. 1103, at 4 (June 16, 2014).
15. Thus, after proving violations of the Voting Rights Act and the Fourteenth Amendment, and in light of this Court’s conclusion that at least some of the violations persist in the current congressional redistricting plan, Plaintiffs are entitled to a permanent injunction.
16. The standard for a permanent injunction is the same as for a preliminary injunction, except that plaintiffs must show actual success on the merits, rather than likelihood of success on the merits. See *Ebay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006); *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 546 n.12 (1987). Thus, to obtain a permanent injunction, a plaintiff must show: “(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to

compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. See, e.g., *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-313 (1982); *Amoco*, 480 U.S. at 542.

17. Federal courts regularly find that restrictions on the fundamental right to vote constitute irreparable injury. See, e.g., *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (the denial of the fundamental right to vote is unquestionably “irreparable harm”); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (same). In particular, discriminatory voting laws are “the kind of serious violation of the Constitution and the Voting Rights Act for which courts have granted immediate relief.” *United States v. City of Cambridge*, 799 F.2d 137, 140 (4th Cir. 1986). Indeed, this Court acknowledged the ongoing harm that Plaintiffs suffer under the current congressional redistricting plans. See, e.g., Op. at 4, 47.
18. Additionally, if Plaintiffs are not afforded injunctive relief, they have no adequate remedy at law.
19. A legal remedy may be deemed inadequate if the plaintiff shows that equitable remedy is necessary to make the plaintiff whole again or monetary damages would be difficult or impossible to measure. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952); see also *Heil Trailer Int’l Co. v. Kula*, 542 Fed. Appx. 329, 335 (5th Cir. 2013) (“An irreparable injury is one that cannot be undone by monetary damages or one for which monetary damages would be especially difficult to calculate”) (internal citations and quotation marks omitted). Voting rights cases such as this one are precisely the sort in which equitable remedies such as injunctions are the only practical remedy. See

Reynolds v. Sims, 377 U.S. 533, 585 (1964) (noting that it would be unusual to not afford injunctive relief after finding a redistricting scheme unconstitutional); *Veasey v. Abbott*, 830 F.3d 216, 268-71 (5th Cir. 2016) (discussing the types of equitable relief appropriate in voting rights cases).

20. Likewise, an examination of the balance of equities readily reveals that those equities weigh strongly in favor of the requested permanent injunction. Any hardships faced by Defendants from an injunction against continued implementation of a racially discriminatory redistricting plan, including the development of a remedial plan, are greatly outweighed by the hardships faced by Plaintiffs and other Texans who face continued impairment of their voting rights. *See, e.g., Taylor v. Louisiana*, 419 U.S. 522 (1975) (“administrative convenience” cannot justify a practice that infringes upon a fundamental right); *Carey v. Population Servs., Int’l*, 431 U.S. 678, 691 (1977) (“[T]he prospect of additional administrative inconvenience has not been thought to justify invasion of fundamental constitutional rights.”). Thus, any administrative burden assumed by the State cannot outweigh the violation of Plaintiffs’ constitutional rights, and those of millions of other Texans.
21. Finally, because “the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights,” *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 667 (1966), “the public interest in an election . . . that complies with the constitutional requirements of the Equal Protection Clause is served by granting” injunctive relief. *NAACP-Greensboro Branch v. Guilford County Bd. of Elections*, 858 F. Supp. 2d 516, 529 (M.D.N.C. 2012); *see also McCutcheon v. Fed. Election Comm’n*, 134 S. Ct. 1434, 1440-41 (2014) (“There is no right more basic in our democracy than the

right to participate in electing our political leaders.”); *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.”). It can hardly be disputed that “[t]he public has an interest in having congressional representatives elected in accordance with the Constitution.” *Personhuballah*, 155 F. Supp. 3d at 560-61.

22. For all of these reasons, Plaintiffs have established that they are entitled to the prompt entry of a permanent injunction of the current congressional redistricting plan, Plan C235, unless and until the portions of that plan that are in violation of the Voting Rights Act or the Fourteenth Amendment are remedied.

REMEDIAL PHASE

23. Plaintiffs also respectfully request that the Court enter a scheduling order to guide the remedy phase and ensure that there is a remedial congressional redistricting plan in place for the 2018 congressional elections.

24. It is urgent that a scheduling order be entered promptly. Filing for positions on the 2018 ballot for congressional seats opens in November 2017. Texas counties must realign their voting precinct boundaries in advance of that date.

25. The Texas Legislature is currently in session, with the session expected to adjourn *sine die* on May 29, 2017.

26. Plaintiffs propose that the Court order the defendants to submit to the Court a proposed remedial congressional redistricting plan by May 5, 2017, and the plaintiffs to submit their proposed congressional remedial plans by May 12, 2017.

27. Plaintiffs propose July 1, 2017 as the date by which all remedial proceedings be completed.
28. This schedule affords the Legislature ample time to draft a remedial map. *See, e.g., Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016) (federal court order giving the North Carolina General Assembly fourteen days to enact a remedial congressional map after striking down two districts as racial gerrymanders); *Larios*, 305 F. Supp. 2d at 1336 (giving the Georgia legislature nineteen days to redraw after the state's legislative districts were deemed malapportioned); *Vieth v. Pennsylvania*, 195 F. Supp. 2d 672, 679 (M.D. Pa. 2002) (ordering a new congressional plan to be enacted within twenty-one days). This schedule also affords the Court sufficient time to consider whether the Legislature's map adequately remedies the Voting Rights Act and Fourteenth Amendment violations identified by the Court and, if necessary, consider alternative remedial maps and adopt a final remedial map.
29. Plaintiffs have conferred with Defendants, who indicated they oppose this Motion.

WHEREFORE, Plaintiffs respectfully move this Court to enter a permanent injunction of the current congressional redistricting plan, Plan C235, unless and until the portions of that plan that this Court determined on March 10, 2017 to be in violation of the Voting Rights Act or the Fourteenth Amendment are remedied. Plaintiffs further move this Court to enter the above-proposed scheduling order for the congressional plan remedial phase of the case.

Dated: March 23, 2017.

Respectfully submitted,

/s/ Allison J. Riggs
Anita S. Earls

N.C. State Bar No. 15597
(Admitted Pro Hac Vice)
Allison J. Riggs
N.C. State Bar No. 40028
(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

Robert Notzon
Law Office of Robert S. Notzon
State Bar Number 00797934
1507 Nueces Street
Austin, TX 78701
512-474-7563
512-474-9489 fax
Robert@NotzonLaw.com

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

*Attorneys for the Texas State Conference of
NAACP Branches, Lawson and Wallace*

/s/ Gary L. Bledsoe
Gary L. Bledsoe
Potter Bledsoe, LLP
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 and
Congresspersons Lee, Johnson and Green*

/s/ Renea Hicks

Renea Hicks
Attorney at Law
State Bar No. 09580400
Law Office of Max Renea Hicks
P.O. Box 303187
Austin, Texas 78703
(512) 480-8231 - Telephone
rhicks@renea-hicks.com

Attorney 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.

/s/ Jose Garza

JOSE GARZA
Texas Bar No. 07731950
MARTIN GOLANDO
Texas Bar No.
MICHAEL MORAN
Texas Bar No.
Law Office of Jose Garza
7414 Robin Rest Dr.
San Antonio, Texas 78209

(210) 392-2856
garzpalm@aol.com

JOAQUIN G. AVILA
LAW OFFICE
P.O. Box 33687
Seattle, Washington 98133
Texas State Bar # 01456150
(206) 724-3731
(206) 398-4261 (fax)

*Attorneys for Mexican American Legislative
Caucus, Texas House of Representatives
(MALC)*

/s/ Nina Perales
Nina Perales
MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND
TX Bar No. 24005046
Ernest I. Herrera
TX Bar No. 24094718
110 Broadway, Suite 300
San Antonio, TX 78205
(210) 224-5476
FAX (210) 224-5382

*Attorneys for Texas Latino Redistricting
Task Force*

/s/ Luis R. Vera, Jr.
LUIS ROBERTO VERA, JR.
LULAC National General Counsel
Law Offices of Luis Roberto Vera, Jr.
& Associates
1325 Riverview Towers 111 Soledad
San Antonio, TX 78205
(210) 225-3300
lrvlaw@sbcglobal.net

Counsel for LULAC Plaintiffs

/s/ J. Gerald Hebert
J. GERALD HEBERT
D.C. Bar #447676
Attorney at Law

191 Somerville Street, #405
Alexandria, VA22304
Telephone: 703-628-4673
Email: hebert@voterlaw.com

JESSE GAINES
TX Bar No. 07570800
PO Box 50093
Ft Worth, TX76105
(817) 714-9988

GERALD H. GOLDSTEIN
Goldstein, Goldstein and Hilley
310 S. St. Mary's Street
29th Floor Tower Life Bldg.
San Antonio, Texas78205
Phone: (210) 852-2858
Fax: (210) 226-8367

MICHAEL B. DESANCTIS
D.C. Bar #460961
JESSICA RING AMUNSON
D.C. Bar #497223
CAROLINE D. LOPEZ
D.C. Bar #989850
Jenner & Block LLP
1099 New York Ave., N.W.
Washington, D.C.20001
Tel: (202) 639-6000
Fax: (202) 639-6066

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
Tel (512) 476-0005
Fax (512) 476-1513

ATTORNEY FOR PLAINTIFFS PEREZ,
TAMEZ, HALL, ORTIZ, SALINAS,
DEBOSE, and RODRIGUEZ

/s/ Rolando L. Rios

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

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 that they oppose the motion.

/s/ Allison J. Riggs
Allison J. Riggs
Attorney for Texas NAACP, Bill Lawson, and Juanita
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 23, 2017:

TIMOTHY F. MELLETT
T. CHRISTIAN HERREN, JR.
BRYAN L. SELLS
JAYE ALLISON SITTON
DANIEL J. FREEMAN
MICHELLE A. MCLEOD
Attorneys
Voting Section, Civil Rights Division
U.S. Department of Justice
Room 7254 NWB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 305-4355

ATTORNEYS FOR PLAINTIFF UNITED STATES

DAVID MATTAX
david.mattax@oag.state.tx.us
DAVID J. SCHENCK
david.schenck@oag.state.tx.us
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)

ATTORNEYS FOR DEFENDANTS STATE OF TEXAS, RICK PERRY, HOPE ANDRADE,
DAVID DEWHURST, AND JOE STRAUS

/s/ Allison J. Riggs
Allison J. Riggs
Attorney for Texas NAACP, Bill Lawson, and Juanita
Wallace