

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.
SA-11-360-OLG-JES-XR
(Consolidated Action)

QUESADA PLAINTIFFS’ ADVISORY PURSUANT TO APRIL 5, 2017 ORDER

Pursuant to this Court’s April 5, 2017 order, the Quesada Plaintiffs respectfully submit this Advisory “discuss[ing] which claims they are pursuing with regard to the 2013 Plans, linking specific claims to specific districts.”

The Quesada Plaintiffs contend that Plan C235 (the “2013 Plan”) perpetuates or maintains many of the same violations the Court found with respect to the Plan C185 (the “2011 Plan”). This Advisory highlights the legal claims the Quesada Plaintiffs intend to raise with respect to the 2013 Plan, broken down by the regions identified in the Court’s opinion with respect to the 2011 Plan, and with affected districts identified.

A. Dallas-Fort Worth Region (“DFW”)

The Quesada Plaintiffs intend to raise the following legal claims regarding the 2013 Plan’s treatment of DFW:

Section 2/Intentional Vote Dilution. The Quesada Plaintiffs contend that the 2013 Plan violates the intentional vote dilution prong of Section 2 (by intentional cracking and packing of

minority voters) with respect to DFW CDs 5, 6, 12, 24, 30, and 32.¹ Although the 2013 Plan improved upon the 2011 Plan by creating CD 33, which performed for African American voters in 2012, 2014, and 2016 by electing Congressman Marc Veasey, the 2013 Plan continues to pack and crack minority voters in a number of districts throughout DFW, and as a result, the 2013 Plan does not include an opportunity district for Latino voters in the DFW region (in addition to the two effective African American opportunity districts in that area now, CDs 30 and 33).

Section 2/Discriminatory Effects. The Quesada Plaintiffs contend that the 2013 plan violates the discriminatory effects prong of Section 2, pursuant to the test announced in *Thornburg v. Gingles*, 478 U.S. 30 (1986), in DFW by failing to create an additional or coalition opportunity district in DFW. That violation implicates the boundaries of a number of districts in this region, such that a remedy of the violation would likely require alterations to CDs 3, 5, 6, 12, 24, 26, 30, 32, and 33.

Fourteenth Amendment/Intentional Vote Dilution. The Quesada Plaintiffs contend that the 2013 plan violates the Equal Protection Clause of the Fourteenth Amendment (by intentional cracking and packing of minority voters) with respect to DFW CDs 5, 6, 12, 24, 30, and 32. *See also supra* note 1. Although the 2013 Plan improved upon the 2011 Plan by creating CD 33, which performed for African-American voters in 2012, 2014, and 2016 (by electing Congressman Marc Veasey), the 2013 Plan continues to pack and crack minority voters in a number of districts throughout DFW, and continues to preclude Latino voters from electing their candidate of choice in a new congressional district.

¹ The violations with respect to these districts necessarily affect adjoining districts, such as 3, 26, and 33.

Fifteenth Amendment. The Quesada Plaintiffs contend that the 2013 Plan violates the Fifteenth Amendment with respect to DFW because of vote dilution.²

Fourteenth Amendment/Shaw-type Racial Gerrymander: The Quesada Plaintiffs contend that CD 30 constitutes an unconstitutional racial gerrymander.³

B. South/West Texas

The Quesada Plaintiffs raise a number of legal claims with respect to the South/West Texas region, as that area was defined by the Court in its opinion with respect to the 2011 Plan. Region-wide, the Quesada Plaintiffs contend that the 2013 Plan violates (1) Section 2/Discriminatory Effects Prong, (2) Section 2/Intentional Vote Dilution, (3) Fourteenth Amendment/Intentional Vote Dilution, and (4) Fifteenth Amendment/Intentional Vote Dilution. *See supra* note 2. In addition to these region-wide violations, which necessarily encompass a number of districts, the Quesada Plaintiffs raise the following district-specific legal violations with respect to the 2013 Plan.

1. CD 23 (South Texas)

The Quesada Plaintiffs intend to raise the following claims with respect to CD 23:

Section 2/Intentional Vote Dilution. The Quesada Plaintiffs contend that CD 23 is the product of intentional vote dilution.

Section 2/Discriminatory Effects. The Quesada Plaintiffs contend that CD 23 has discriminatory effects under the *Gingles* test.

² The Quesada Plaintiffs recognize that this Court's prior ruling granting partial summary judgment to the State Defendants with respect to the Fifteenth Amendment controls this claim, but note it here to preserve this claim for appeal.

³ To the extent the Court proceeds to trial on the 2013 Plan, all parties should be permitted to update/amend their pleadings with respect to the 2013 Plan in light of the Court's March 10, 2017 ruling regarding the 2011 Plan; doing so would pose no risk of prejudice to the Defendants.

Fourteenth Amendment/Intentional Vote Dilution. The Quesada Plaintiffs contend that CD 23 is the product of intentional vote dilution.

Fourteenth Amendment/Shaw-type Racial Gerrymander. The Quesada Plaintiffs contend that CD 23 is an unconstitutional racial gerrymander under the *Shaw* line of cases. *See supra* note 3.

Fifteenth Amendment. The Quesada Plaintiffs contend that CD 23 constitutes intentional vote dilution. *See supra* note 2.

2. CD 27 (Nueces County)

The Quesada Plaintiffs intend to raise the following claims with respect to CD 27,⁴ which continues to fracture Latino voters and strand over 200,000 Latinos in Nueces County in an Anglo-majority district. CD 27 in the 2013 Plan is identical to the 2011 Plan.

Section 2/Intentional Vote Dilution: The Quesada Plaintiffs contend that CD 27 is the product of intentional vote dilution.

Section 2/Discriminatory Effects: The Quesada Plaintiffs contend that CD 27 has discriminatory effects under the *Gingles* test.

Fourteenth Amendment/Intentional Vote Dilution. The Quesada Plaintiffs contend that CD 27 is the product of intentional vote dilution.

Fifteenth Amendment. The Quesada Plaintiffs contend that CD 27 constitutes intentional vote dilution. *See supra* note 2.

⁴ The legal violations with respect to CD 27 also necessarily implicate the boundaries of CD 34.

3. CD 35 (Austin/San Antonio)

The Quesada Plaintiffs intend to raise the following claims with respect to CD 35,⁵ which was created to intentionally dismantle the performing cross-over district formerly known as CD 25 (held by Congressman Doggett). CD 35 in the 2013 Plan is identical to the 2011 Plan.

Fourteenth Amendment/Shaw-type Racial Gerrymander. The Quesada Plaintiffs contend that CD 35 is an unconstitutional racial gerrymander under the *Shaw* line of cases. *See supra* note 3.

Fourteenth Amendment/Intentional Destruction of Cross-Over District. The Quesada Plaintiffs contend that, under the plurality opinion of *Bartlett*, CD 35 was created with the intent to use racial tools to destroy an existing cross-over district, in violation of the Equal Protection Clause.

Fifteenth Amendment/Intentional Destruction of Cross-Over District. The Quesada Plaintiffs contend that, under the plurality opinion of *Bartlett*, CD 35 was created with the intent to use racial tools to destroy an existing cross-over district, in violation of the Fifteenth Amendment.⁶

⁵ The legal violations with respect to CD 35 also necessarily implicate the boundaries of CDs 10, 17, 21, and 25.

⁶ This type of Fifteenth Amendment violation was not addressed by the Court's prior grant of partial summary judgment to the State Defendants.

Dated: April 24, 2017

Respectfully submitted,

/s/ J. Gerald Hebert

J. GERALD HEBERT (admitted *pro hac vice*)

MARK P. GABER (*pro hac vice* pending)

J. Gerald Hebert P.C.

191 Somerville Street, #405

Alexandria, VA 22305

703-628-4673

hebert@voterlaw.com

mark.gaber@gmail.com

GERALD H GOLDSTEIN (No. 08101000)

Goldstein, Goldstein and Hilley

310 S. St. Mary's Street

San Antonio, TX 78205-4605

210-226-1463/210-226-8367 (facsimile)

ggandh@aol.com

DONALD H. FLANARY, III (No. 24045877)

Flanary Law Firm

1005 South Alamo

San Antonio, TX 78210

210-738-8383/210-738-9426 (facsimile)

donflanary@hotmail.com

JESSICA RING AMUNSON (admitted *pro hac vice*)

Jenner & Block LLP

1099 New York Ave. NW, Ste. 900

Washington, DC 20001

202-639-6000/202-639-6066 (facsimile)

jamunson@jenner.com

JESSE GAINES

P.O. Box 50093

Fort Worth, TX 76105

817-714-9988

Attorneys for the Quesada Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2017, I served a copy of the foregoing Quesada Plaintiffs' Advisory on all counsel who are registered to receive NEFs through the CM/ECF system.

/s/ J. Gerald Hebert
J. GERALD HEBERT