

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.
SA-11-CA-360-OLG-JES-XR
[Lead case]

**DEFENDANTS' RESPONSE TO DIRECTIVE REGARDING THE STATE'S POSITION ON
A SPECIAL SESSION FOR REDISTRICTING**

On May 22, 2017, the Court directed Defendants' counsel to confer with their clients and report to the Court whether or not the State wishes to voluntarily undertake redistricting in a special session. Counsel have conferred with their clients and now advise the Court that, for the following reasons, the State does not intend to undertake redistricting in a special session.

First, the Texas Legislature already convened in a special session in 2013 to adopt redistricting plans drawn by this Court as interim plans in 2012. The Court drew those plans according to the Supreme Court's instruction in this case: "to draw interim maps that do not violate the Constitution or the Voting Rights Act." *Perry v. Perez*, 565 U.S. 388, 396 (2012) (per curiam). And it drew those plans according to the Supreme Court's longstanding instruction that court-ordered redistricting plans must be drawn "in a manner 'free from any taint of arbitrariness or discrimination.'" *Connor v. Finch*, 431 U.S.

407, 415 (1977) (quoting *Roman v. Sincock*, 377 U.S. 695, 710 (1964)). When it implemented the interim Congressional plan, the Court “[look] care not to incorporate into the interim plan any legal defects in the state plan.” Order at 10–11 (March 19, 2012), ECF No. 691 (quoting *Perez*, 565 U.S. at 394). Similarly, in adopting the House plan, the Court followed “the Supreme Court’s direction to leave undisturbed any district that is free from legal defect” but not to “incorporate any portion of the State map that is allegedly tainted by discriminatory purpose.” Opinion at 2, 4 (March 19, 2012), ECF No. 690. The 2013 Legislature had every reason to believe the court-drawn plans complied with the Constitution and Voting Rights Act. The Legislature did not act with a discriminatory purpose, use race as the predominant factor, or violate the Voting Rights Act when it adopted plans this Court found to be free of legal defects.¹ Even the U.S. Department of Justice under the Obama Administration did not challenge the 2013 Legislature’s adoption of the court-drawn plans.

Second, any further attempt to reconfigure the State’s electoral districts will only result in new legal challenges. In 2013, the Legislature enacted this Court’s plans because it wanted to adopt fair, legal, and permanent redistricting plans. Nevertheless, the majority of plaintiffs alleged that the Legislature engaged in purposeful racial discrimination despite the fact that it enacted plans adopted by this Court. Thus, if the Legislature were to engage in a third round of redistricting this decade and redraw the

¹ The Legislature’s 2013 House plan, Plan H358, is identical to the Court’s interim plan, Plan H309, except for minor amendments agreed upon by the affected House members.

State's electoral districts yet again, there is no reason to doubt that plaintiffs would bring a new set of claims against the new plans.²

Third, while new 2017 redistricting plans would lead to new claims of racial discrimination, a majority of this Court has already determined that they could not end the existing litigation against the plans adopted in 2013. Defendants have filed several motions to dismiss claims against the Legislature's 2011 redistricting plans as moot because the plans were never used in an election and were repealed in 2013. This Court has rejected every one of those motions. The State continues to maintain that legal claims against a statute are moot if that statute has never been used and has been repealed before taking legal effect. But if repeal of the 2011 plans did not moot the plaintiffs' claims against them, then repeal of the 2013 plans would not moot the plaintiffs' claims against them, either. Because the 2013 Legislature enacted fair and legal redistricting plans, the State does not intend to undertake yet another round of redistricting.

² *See, e.g.*, Transcript of Status Conference (April 27, 2017) at 41:9–10 (“We are going to be back in court again. We all know that. We always are.”).

Date: May 25, 2017

Respectfully submitted.

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