

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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| JOHN T. MORRIS | § | |
| <i>Plaintiff,</i> | § | |
| | § | |
| v. | § | CAUSE NO. 4:11-cv-02244 |
| | § | |
| STATE OF TEXAS, et al., | § | |
| <i>Defendants.</i> | § | |

NOTICE OF RELATED LITIGATION

Defendants the State of Texas, Rick Perry, David Dewhurst, Joe Straus, and Hope Andrade, pursuant to Local Rule 5.2, respectfully submit this Notice of Related Litigation identifying and describing all pending Texas redistricting cases.

A. REDISTRICTING CASES PENDING IN FEDERAL COURT

1. *Teuber, et al. v. Texas, et al.*, Cause No. 5:11-cv-572-OLG-JES-XR (W.D. Tex., filed Feb. 10, 2011).

This case was originally filed in the Eastern District of Texas under cause no. 4:11-cv-59 (E.D. Tex., filed Feb. 10, 2011). On July 6, 2011, Fifth Circuit Chief Judge Edith Jones entered an Order Constituting Three-Judge Court, which designated Circuit Judge Jerry Smith and District Judge Orlando Garcia. On July 8, the Court transferred the case *sua sponte* to the Western District of Texas, San Antonio Division, where it was assigned to Judge Garcia. On July 11, a three-judge court consisting of Judge Garcia, Judge Smith, and Judge Rodriguez was convened, and the three-judge court entered a Scheduling Order setting the case for trial on September 6, 2011. On July 18, the State Defendants filed a motion to consolidate the *Teuber* case with the three cases previously consolidated under the lead case *Perez, et al. v. Texas, et al.*

This case includes a challenge to the use of unadjusted census data for redistricting, a constitutional and Voting Rights Act challenge to the recently enacted redistricting plans for the Texas House and Senate, and a congressional redistricting claim seeking a court-ordered redistricting plan. The plaintiffs are Kaaren Teuber, a registered voter in Grayson County; and Jim K. Burg and Ricky L. Grunden, both registered voters in Denton County. The defendants are the State of Texas, Governor Rick Perry, Lieutenant Governor David Dewhurst, Texas House Speaker Joe Straus, Texas Secretary of State Hope Andrade, Texas Democratic Party Chair Boyd Richie, Texas Republican Party Chair Steve Munisteri, U.S. Secretary of Commerce Gary Locke, and U.S. Census Bureau Director Robert Groves. Mexican American Legislative Caucus's motion to intervene was granted on March 29, 2011. The plaintiffs voluntarily dismissed their claims against Defendants Locke and Groves on June 29, 2011.

The plaintiffs allege that the use of unadjusted Census for reapportionment and redistricting violates the Fourteenth and Fifteenth Amendments, Section 2 of the Voting Rights Act, and the Texas Constitution. Their central allegation is that the inclusion of undocumented immigrants in the Census population unlawfully strengthens the votes of persons who reside in electoral districts with large undocumented immigrant populations.

In their First Amended Complaint, the plaintiffs seek declaratory and injunctive relief against the use of existing electoral districts; a declaratory judgment that redistricting based on unadjusted census data violates federal law; injunctive relief against the use of unadjusted census population data to draw new congressional, House, Senate, and State Board of Education districts; and a judgment ordering the state or federal defendants to adjust the 2010 census population data. In their First Supplemental Complaint, the plaintiffs allege that the redistricting plans for the Texas House and Senate violate the U.S. Constitution and Sections 2 and 5 of the

Voting Rights Act because they are based on defective population data. They also allege that the Texas Legislature adjourned its regular session without enacting a congressional redistricting plan, and that the existing districts violate the U.S. Constitution and Sections 2 and 5 of the Voting Rights Act.

The State defendants moved to dismiss Plaintiffs' First Amended and First Supplemental Complaint pursuant to Rules 12(b)(1) and 12(b)(6) on July 6. Plaintiffs filed an unopposed motion for extension of time to respond on July 18.

2. *Mexican American Legislative Caucus v. Texas, et al.*, Cause No. 7:11-cv-144 (S.D. Tex., filed April 5, 2011).

Plaintiff is Mexican American Legislative Caucus, Texas House of Representatives (MALC). Defendants are the State of Texas, Governor Rick Perry, Lieutenant Governor David Dewhurst, and Texas House Speaker Joe Straus.

Plaintiff filed its original petition on April 5, 2011 in the 139th District Court of Hidalgo County. The case was removed to the United States District Court for the Southern District of Texas, McAllen Division, on May 13, 2011.

MALC alleges that the 2010 Census data is defective because the Census undercounted Latinos in Texas by as much as four to eight percent. It complains that the use of Census data to draw congressional, Texas House, Texas Senate, and State Board of Education districts discriminates against Latino voters by undervaluing Latinos and limiting the number of Latino-majority electoral districts. MALC also alleges that the existing congressional, House, Senate, and SBOE districts violated the one-person, one-vote principle.

MALC seeks the following relief: (1) a declaratory judgment that the defendants are violating the "Plaintiffs' fundamental voting rights" under the Texas Constitution; (2) an injunction against the use of any redistricting plan that does not "account for the undercount of

Latinos”; and (3) an order directing the defendants to conduct a special election under a court-approved plan that accounts for the undercount of Latinos and guarantees minorities an equal opportunity to elect candidates of their choice.

The current issue is whether the district court has subject matter jurisdiction over the case. MALC filed a motion to remand on June 2, 2011. The defendants responded on June 22, 2011. The court has set an initial pretrial and scheduling conference on August 3, 2011. On July 19, 2011, the defendants filed a motion to convene a three-judge court pursuant to 28 U.S.C. § 2284 and an unopposed motion to transfer to the Western District of Texas, San Antonio Division, pursuant to 28 U.S.C. § 1404(a).

3. *Perez, et al. v. Texas, et al.*, No. 5:11-cv-360-OLG-JES-XR (W.D. Tex., filed May 9, 2011).

On July 6, 2011, the three-judge court consolidated *Perez* with *Mexican American Legislative Caucus v. Texas, et al.*, No. 5:11-cv-361-OLG-JES-XR, and *Texas Latino Redistricting Task Force, et al. v. Perry*, No. 5:11-cv-490-OLG-JES-XR, designating *Perez* as the lead case. On the same day, the court issued a Scheduling Order setting the consolidated cases for trial on September 6, 2011. The parties made initial disclosures pursuant to the scheduling order on July 13. The Texas Latino Redistricting Task Force and MALC supplemented their initial disclosures on July 15 and July 17, respectively.

The plaintiffs are Shannon Perez, a citizen and registered voter of Bexar County; Harold Dutton, Jr., a citizen and registered voter of Harris County and a member of the Texas House of Representatives representing the 142nd legislative district; and Gregory Tamez, a citizen and registered voter of Bexar County. The defendants are the State of Texas, Governor Rick Perry, Lieutenant Governor David Dewhurst, Texas House Speaker Joe Straus, and Texas Secretary of

State Hope Andrade. The Texas Democratic Party and Boyd Richie intervened as defendants on July 13, 2011. Congressman Henry Cuellar intervened as a plaintiff on July 15, 2011.

In their Second Amended Complaint, filed on June 17, 2011, the plaintiffs assert the following claims: (1) the practice of counting prisoners as residents of the county in which they are incarcerated violates state and/or federal law, resulting in excessive population deviation among the House and congressional districts in violation of the Fourteenth Amendment and depriving urban dwellers of equal representation; and (2) the Texas House redistricting plan as enacted is a political gerrymander which, under the Supreme Court decision in *Cox v. Larios*, 542 U.S. 947 (2004), operates to deny the State the 10% safe harbor historically accorded state redistricting plans, and the plan contains excessive deviation which is not the product of a good faith effort to achieve population equality, all in violation of the Fourteenth Amendment. The defendants filed a motion to dismiss under Rules 12(b)(1) and 12(b)(6) on July 1, to which the plaintiffs responded on July 11.

4. *Mexican American Legislative Caucus v. Texas, et al.*, No. 5:11-cv-361-OLG-JES-XR (W.D. Tex., filed May 9, 2011).

On July 6, the court issued an order consolidating this case, along with *Texas Latino Redistricting Task Force, et al. v. Perry*, No. 5:11-cv-490-OLG-JES-XR, under the lead case *Perez, et al. v. Texas, et al.*, No. 5:11-cv-360-OLG-JES-XR. On the same day, the court entered a Scheduling Order setting the case for trial on September 6, 2011.

The plaintiff is the Mexican American Legislative Caucus, Texas House of Representatives (MALC). The defendants are the State of Texas, Governor Rick Perry, Lieutenant Governor David Dewhurst, and Texas House Speaker Joe Straus. The League of United Latin American Citizens (LULAC) intervened as a plaintiff on July 6, 2011.

In their First Amended Complaint, filed on May 31, 2011, the plaintiffs assert the following claims: (1) the use of unadjusted 2010 Census population data to draw new electoral districts for the Texas House of Representatives violates Section 2 of the Voting Rights Act because the Census undercounted the Latino population; (2) the Texas House redistricting plan contains excessive population deviations in violation of the Equal Protection Clause principle of one person, one vote; (3) the Texas House redistricting plan has a discriminatory purpose and effect in violation of Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments; (4) the current Texas House and congressional districts violate the principle of one person, one vote under the Equal Protection Clause; (5) the Texas House redistricting plan violates Section 5 of the Voting Rights Act; and (6) the practice of holding statewide elections for members of the Texas Railroad Commission violates Section 2 of the Voting Rights Act.

The State defendants have filed a motion to dismiss under Rules 12(b)(1) and 12(b)(6), to which Plaintiff responded on July 12.

5. *Rodriguez, et al. v. Texas, et al.*, No. 1:11-cv-451-LY (W.D. Tex., filed May 30, 2011).

This case presents constitutional and statutory challenges to the State's congressional redistricting plan (Plan C185). On June 24, 2011, the court entered an Agreed Order Regarding Preliminary Schedule, which abated all requirements of Rule 26 and the local rules until further order, stated that the plaintiffs shall file an amended complaint after a congressional redistricting plan is adopted, and extended the answer deadline to 20 days after the filing of the amended complaint. On July 6, 2011, Chief Judge Jones issued an Order Constituting Three-Judge Court, which designated Circuit Judge Jerry E. Smith and District Judge Orlando L. Garcia as members of the three-judge court. On July 18, 2011, the three-judge court held a hearing to determine whether the case should be transferred to the San Antonio division.

The plaintiffs are Travis County; the City of Austin; State Representative Eddie Rodriguez, Milton Gerard Washington, and Bruce Elfant, of Austin, Texas; Alex Serna and Sandra Serna of El Paso, Texas; Betty F. Lopez, David Gonzalez, and Beatrice Saloma, of San Antonio, Texas; and Jose Norberto Rivera of Houston, Texas. The defendants are the State of Texas, Governor Rick Perry, Lieutenant Governor David Dewhurst, Texas House Speaker Joe Straus, Texas Secretary of State Hope Andrade, Texas Democratic Party Chair Boyd Richie, and Texas Republican Party Chair Steve Munisteri.

In their Original Complaint, the plaintiffs alleged that the Texas Legislature adjourned its regular session without enacting a congressional redistricting plan and that the existing congressional districts were malapportioned. In their First Amended Complaint, filed on July 18, 2011, the plaintiffs challenge the congressional redistricting plan adopted by the Legislature in special session (Plan C185), alleging that the plan violates Section 2 of the Voting Rights Act, the Equal Protection Clause, the Fifteenth Amendment, and the one-person, one-vote principle of Article I, § 2 of the United States Constitution.

6. *Morris v. State of Texas, et al.*, No. 4:11-cv-2244 (S.D. Tex., filed June 15, 2011).

This is a constitutional challenge to the Second Congressional District as redrawn by the Legislature. Plaintiff is John T. Morris, pro se, a registered voter in Harris County, Texas. Defendants are the State of Texas, Rick Perry, David Dewhurst, Joe Straus, and Hope Andrade.

Mr. Morris complains that by redrawing Congressional District 2 to include more Republican voters and eliminate residents of Liberty and Jefferson Counties, the Texas Legislature interfered with his and fellow constituents' ability to effectively evaluate the performance of their congressman, thus violating the purpose of frequent elections under Article I, § 2 of the U.S. Constitution and abridging his right to an effective political voice. He claims

that the proposed congressional redistricting plan violates his First Amendment right of political speech, his First Amendment right to a fair and effective vote, and Article I, § 2 of the United States Constitution. Mr. Morris asks the Court to appoint a three-judge court and enjoin the State from changing the boundaries of the Second Congressional District any more than necessary to accommodate the four new congressional seats apportioned to Texas after the 2010 Census.

Defendants have waived service. No responsive pleading has been filed.

7. *Texas Latino Redistricting Task Force, et al. v. Perry*, No. 5:11-cv-490-OLG-JES-XR (W.D. Tex., filed June 17, 2011).

On July 6, 2011, the court issued an order consolidating the case, along with *Mexican American Legislative Caucus v. Texas, et al.*, under the lead case *Perez, et al. v. Texas, et al.* On the same day, the court entered a Scheduling Order setting the case for trial on September 6, 2011.

Plaintiffs are the Texas Latino Redistricting Task Force, an unincorporated association, and individual registered voters in Corpus Christi, Fort Worth, Louise, and San Antonio. The defendant is Governor Rick Perry.

The plaintiffs claim that the existing congressional and Texas House districts are malapportioned in violation of the Fourteenth Amendment and that they dilute Latino citizens' votes in violation of Section 2 of the Voting Rights Act. They also allege that the Texas House Redistricting plan cannot be implemented until it is precleared pursuant to Section 5 of the Voting Rights Act. The plaintiffs ask the Court to set a deadline for the state to correct the deficiencies in the existing congressional and House districts and, if the state fails to act, to draw new districts. On July 14, 2011, Governor Perry filed a motion to dismiss under Rules 12(b)(1) and 12(b)(6).

8. *Quesada, et al. v. Perry, et al.*, No. 5:1-cv-592-OLG (W.D. Tex., filed July 15, 2011).

Plaintiffs are Hispanic and African-American registered voters in Bexar, Dallas, and Tarrant County, and Representative Marc Veasey, who represents District 95 in the Texas House of Representatives. The Complaint alleges that the Texas Legislature's congressional redistricting plan (Plan C185) dilutes minority voting strength in violation of Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the United States Constitution, that it violates the Equal Protection Clause because several districts reflect excessive consideration of race, and that it is an unconstitutional partisan gerrymander. Plaintiffs seek declaratory and injunctive relief preventing the State from conducting elections under the congressional redistricting plan. Defendants have not been served.

B. REDISTRICTING CASES PENDING IN STATE COURT

1. *Teuber, et al. v. Texas, et al.*, No. CV-11-270, in the 397th District Court of Grayson County, Texas, filed February 16, 2011.

This case includes a challenge to the use of unadjusted census data for redistricting, a challenge to the recently enacted redistricting plans for the Texas House and Senate, and a congressional redistricting claim seeking a court-ordered redistricting plan. The plaintiffs are individual registered voters in Denton and Grayson Counties. The defendants are the State of Texas, Rick Perry, David Dewhurst, Joe Straus, Hope Andrade, Boyd Richie, Steve Munisteri, Gary Locke, and Robert Groves. An amended complaint was filed on June 1, 2011. To the State's knowledge, defendants Richie, Munisteri, Locke, and Groves have not been served.

The plaintiffs' central allegation is that the inclusion of undocumented immigrants in the Census population unlawfully strengthens the votes of persons who reside in electoral districts with large undocumented alien populations and, as a result, dilutes the votes of persons who live in electoral districts with small undocumented alien populations. In their First Amended

Petition, the plaintiffs seek declaratory and injunctive relief against the use of existing electoral districts; a declaratory judgment that redistricting based on unadjusted census data violates federal law; injunctive relief against the use of unadjusted census population data to draw new congressional, House, Senate, and State Board of Education districts; and a judgment ordering the State or Federal Defendants to adjust the 2010 Census population. In their First Supplemental Pleading, the plaintiffs allege that the redistricting plans for the Texas House and Senate violate the U.S. Constitution and Sections 2 and 5 of the Voting Rights Act because they are based on defective population data. They also allege that the Texas Legislature adjourned its regular session without enacting a congressional redistricting plan, and the existing districts violate the U.S. Constitution and Sections 2 and 5 of the Voting Rights Act.

The State defendants filed an answer and general denial on July 5, 2011.

2. *Barton, et al. v. Texas, et al.*, No. 11-20238-CV, in the 13th District Court of Navarro County, Texas, filed May 22, 2011.

This is a congressional redistricting case. The plaintiffs are Joe Barton, U.S. Representative for the Sixth Congressional District of Texas; Frank Steed, Chairman of the Navarro County Republican Party; and Charles Washburn, a registered voter in Navarro County. The defendants are the State of Texas and Hope Andrade.

The plaintiffs allege that the Texas Legislature failed to enact a congressional redistricting plan and that the existing congressional districts are malapportioned in violation of Article I sections 3, 3a, 19, and 29, and Article III section 26 of the Texas Constitution. They seek declaratory relief invalidating the existing congressional districts and an injunction creating a new congressional redistricting plan.

The defendants filed an answer and general denial on June 17, 2011.

3. *Washburn v. Texas, et al.*, No. CV 110921, in the 397th District Court of Grayson County, Texas, filed May 26, 2011.

This case includes a challenge to the State Board of Education redistricting plan and a congressional redistricting claim. The plaintiff is Mark Washburn, a registered voter in Grayson County. The defendants are the State of Texas and Hope Andrade.

In his amended petition, filed on May 30, 2011, the plaintiff alleges that the redistricting plan for the State Board of Education contains excessive population deviations between districts in violation of the Texas Constitution. The plaintiff also alleges that the Texas Legislature adjourned its regular session without enacting a congressional redistricting plan and that the existing congressional districts are malapportioned in violation of Article I sections 3, 3a, 19, and 29, and Article III section 26 of the Texas Constitution.

The plaintiff asks the court to enter a declaratory judgment concerning the existing congressional districts and the newly enacted SBOE districts and to draw new congressional districts consistent with the Texas Constitution.

The defendants filed an answer and general denial on July 1, 2011.

4. *Barton, et al. v. Texas, et al.*, No. 11-20263-CV, in the 13th District Court of Navarro County, Texas, filed May 30, 2011.

This is a congressional redistricting case. The plaintiffs are Joe Barton, U.S. Representative for the Sixth Congressional District of Texas; Frank Steed, Chairman of the Navarro County Republican Party; and Charles Washburn, a registered voter in Navarro County. The defendants are the State of Texas and Hope Andrade.

The plaintiffs allege that the Texas Legislature adjourned its regular session without enacting a congressional redistricting plan and that the existing congressional districts are malapportioned in violation of Article I sections 3, 3a, 19, and 29, and Article III section 26 of

the Texas Constitution. They seek declaratory relief invalidating the existing congressional districts and an injunction creating a new congressional redistricting plan.

The defendants filed an answer and general denial on June 27, 2011.

5. *Washburn v. Texas, et al.*, No. CV 110931, in the 397th District Court of Grayson County, Texas, filed May 30, 2011.

This is a congressional redistricting case. The plaintiff is Mark Washburn, a registered voter in Grayson County. The defendants are the State of Texas and Hope Andrade.

The plaintiff alleges that the Texas Legislature adjourned its regular session without enacting a congressional redistricting plan and that the existing congressional districts are malapportioned in violation of Article I sections 3, 3a, 19, and 29, and Article III section 26 of the Texas Constitution. He seeks declaratory relief invalidating the existing congressional districts and an injunction creating a new congressional redistricting plan.

The defendants filed an answer and general denial on July 1, 2011.

6. *Limon v. Perry, et al.*, No. D-1-GN-11-1611, in the 351st Judicial District Court of Travis County, Texas, filed May 30, 2011.

This is a congressional redistricting case. The plaintiff is John “Canica” Limon, a registered voter in Austin, Texas. The defendants are the State of Texas, Rick Perry, David Dewhurst, Joe Straus, Hope Andrade, Boyd Richie, and Steve Munisteri.

The plaintiff alleges that the Texas Legislature adjourned its regular session without enacting a congressional redistricting plan and that the existing congressional districts are malapportioned in violation of Article I sections 3, 3a, 19, and 29, and Article III section 26 of the Texas Constitution. He seeks declaratory relief invalidating the existing congressional districts and an injunction creating a new congressional redistricting plan.

The defendants have not been served.

7. *Garcia, et al. v. Perry, et al.*, No. D-1-GN-11-1612, in the 351st Judicial District Court of Travis County, Texas, filed May 30, 2011.

This is a congressional redistricting case. The plaintiffs are Travis County, the City of Austin, and individual voters in Austin, El Paso, Humble, and San Antonio. The defendants are the State of Texas, Rick Perry, David Dewhurst, Joe Straus, Hope Andrade, Boyd Richie, and Steve Munisteri.

The plaintiffs allege that the Texas Legislature adjourned its regular session without enacting a congressional redistricting plan and that the existing congressional districts are malapportioned in violation of Article I section 2 of the United States Constitution. They seek declaratory relief invalidating the existing congressional districts and an injunction creating a new congressional redistricting plan.

The defendants filed an answer and general denial on June 27, 2011.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent *via* the U.S. mail and the court's electronic notification system on July 19, 2011 to:

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/s/ David Schenck
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