

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.
11-CA-360-OLG-JES-XR
[Lead Case]

MEXICAN AMERICAN §
LEGISLATIVE CAUCUS, TEXAS §
HOUSE OF REPRESENTATIVES, §
Plaintiffs, §
v. §
STATE OF TEXAS, et al., §
Defendants. §

CIVIL ACTION NO.
SA-11-CA-361-OLG-JES-XR
[Consolidated Case]

TEXAS LATINO REDISTRICTING §
TASK FORCE, et al., §
Plaintiffs, §
v. §
RICK PERRY, §
Defendant. §

CIVIL ACTION NO.
SA-11-CA-490-OLG-JES-XR
[Consolidated Case]

MARGARITA V. QUESADA, et al., §
Plaintiffs, §
v. §
RICK PERRY, et al., §
Defendants. §

CIVIL ACTION NO.
SA-11-CA-592-OLG-JES-XR
[Consolidated Case]

EDDIE RODRIGUEZ, et al.,	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO.
	§	SA-11-CA-635-OLG-JES-XR
RICK PERRY, et al.,	§	[Consolidated Case]
Defendants.	§	

JOINT ADVISORY ON CD 23 ISSUES IN PROPOSED PLAN C226

Pursuant to the Order of February 21, 2012 (ECF #666), certain Plaintiffs and Plaintiff-Intervenors—the Rodriguez plaintiffs, the Quesada plaintiffs, the LULAC plaintiffs, the Texas NAACP plaintiffs, and the African-American Congressional plaintiffs—jointly submit this advisory on CD 23 under Plan C226.

I. PLAN C226’S CD 23 DOES NOT RETURN THE DISTRICT TO BENCHMARK PERFORMANCE.

A. Dr. Ansolabehere analysis

Plan C226’s CD 23 reduces the performance—in terms of the ability of Hispanic voters’ in the district to elect their candidate of choice—below the performance of CD 23 in Plan C100, the benchmark plan. Dr. Stephen Ansolabehere, who testified as an expert in election analysis in both this Court and the D.C. Section 5 court, has performed an analysis to answer this question. His February 22 report—“Analysis of Congressional District 23 under Plans C100 and C226,” [“Ansolabehere Feb. 22 Rep.”]—is attached as Exhibit 1 to this advisory.

As detailed in the report, “Plan C226 reduces the performance of CD 23 compared with the benchmark CD 23 under Plan C100 in *every* election” examined by Dr. Ansolabehere. (emphasis added). Ansolabehere Feb. 22 Rep. ¶ 5. This reduction is true in key races (President and Governor) as well as overall. *Id.* ¶ 6.

Under C100's CD 23, the average percent vote for the minority preferred candidate was 46.2%. *Id.* Table 1. Under C226's CD 23, that percentage drops 1.5%, to 44.7%. *Id.* In C100's CD 23, Hispanic preferred candidates won a majority of the votes in two of the analyzed contests. *Id.* ¶ 7. In C226's CD 23, Hispanic candidates also received a majority of the vote in two contests (both in 2008), but C100's CD 23 drops the size of the majority "substantially," to the point that "margins of victory are the barest of majorities." *Id.*

Dr. Ansolabehere concludes that C100's CD 23 is an Hispanic ability-to-elect district, but "not a very strong such district." *Id.* ¶ 9 (at p. 5). "Altering the configuration of CD 23 along the lines of C226 will only reduce the expected vote share of Hispanic-preferred candidates and their likelihood of winning." *Id.* Finally, C226's version of CD 23 reduces "the ability of Hispanics to elect their preferred candidates." *Id.* ¶ 10.

B. Dr. Murray analysis

Dr. Ansolabehere's analysis is consistent with Dr. Murray's analysis. *See* "An Analysis of Congressional Plan C226," Dr. Richard Murray (Feb. 13, 2012) (ECF #647-1) ["Murray Feb. 13 Rep."]. Dr. Murray concludes that C226's CD 23 "clearly reduces the effective opportunity for Hispanic voters . . . to elect candidates of their choice" compared to C100's CD 23. Murray Feb. 13 Rep. at 1. He explains how:

This is done by the removal of high-turnout Hispanic voters in Bexar County, who were used to bolster a new opportunity district, CD 35, being cobbled together largely from Latino neighborhoods in Bexar and Travis Counties. At the same time, C226 leaves in CD23 high-turnout Anglo VTDs in west and north Bexar County with a history of strong voter polarization against Hispanic-supported candidates. The net result is that CD[23] will not be an effective opportunity district under C226.

Id. at 1-2.

II. REPAIRING THE LEGAL DEFECTS IN C185'S CD 23 IS KEY TO REPAIRING A HOST OF OTHER C185 LEGAL DEFECTS ACROSS SOUTH, WEST, AND CENTRAL TEXAS, AND C226'S CD 23 DOES NOTHING TO HELP IN THAT REGARD.

The CD 23 matter before this Court involves more than just the Section 5 retrogression issue raised by the Court's question of February 21. It also raises issues under the purpose prong of Section 5, constitutional issues of equal protection, and Section 2 issues. Even on the Section 5 retrogression issue, though, C226's CD 23 would not remedy the "legal defect" in C185's CD 23 that *Perry v. Perez* requires the Court to correct.

As to the purpose issue under Section 5, C226 in general, and its CD 23 proposal in particular, would, if adopted, leave in place serious "legal defects" in C185. It would not cure the "Opie nudge factor" built into CD 23. It would leave untouched C185's fundamental flaw in deliberately isolating nearly 240,000 Hispanic residents of Nueces County from the South and West Texas swath of districts and Hispanic voters. (This isolation also presents major issues under Section 2 and the Equal Protection Clause.)

Remedying the legal shortcomings in C185's CD 23 is fundamental to remedying numerous other legal defects in C185. C226's CD 23 leaves all of this unaddressed and unremedied. A CD 23 remedy is key to curing the legal defects of C185 in Nueces County, in south San Antonio, in CD 20, in crossover CD 25, and in a new Central or South Texas CD 35 that does not play a role in destroying crossover CD 25. *See also* Murray Feb. 13 Rep. at 2 (discussing the direct linkage among CD 23, CD 20, and CD 35).

CONCLUSION

The Court should not incorporate C226's CD 23 in any interim congressional map. Doing so would be inconsistent with the Supreme Court standards announced in *Perry v. Perez*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of February, 2012, I electronically filed the foregoing using the CM/ECF system which will send notification of such filing to all counsel of record who have registered with this Court's ECF system, and via first class mail to those counsel who have not registered with ECF.

/s/ Renea Hicks

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