

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

SHANNON PEREZ, et al., §  
Plaintiffs §

and §

EDDIE BERNICE JOHNSON, et al., §

and §

TEXAS CONFERENCE OF NAACP §  
BRANCHES, et al., §  
Plaintiff-Intervenors §

v. §

STATE OF TEXAS, et al., §  
Defendants §

CIVIL ACTION NO. 11-CA-360  
OLG-JES-XR

(Lead Case)

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MEXICAN AMERICAN LEGISLATIVE §  
CAUCUS, TEXAS HOUSE OF §  
REPRESENTATIVES (MALC), §  
Plaintiff §

and §

THE HONORABLE HENRY CUELLAR, §  
Member of Congress, CD 28, §

and §

LEAGUE OF UNITED LATIN §  
AMERICAN CITIZENS (LULAC), et al., §  
Plaintiff-Intervenors §

v. §

STATE OF TEXAS, et al., §  
Defendants §

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

TEXAS LATINO REDISTRICTING	§	
TASK FORCE, et al.,	§	
Plaintiffs	§	
	§	
v.	§	CIVIL ACTION NO. 11-CA-490
	§	OLG-JES-XR
RICK PERRY, in his official capacity	§	[Consolidated Case]
as Governor of the State of Texas,	§	
Defendants	§	

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MARGARITA QUESADA, et al.,	§	
Plaintiffs	§	
	§	
v.	§	CIVIL ACTION NO. 11-CA-592
	§	OLG-JES-XR
RICK PERRY, et al.,	§	[Consolidated Case]
Defendants	§	

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

**ADVISORY TO THE COURT REGARDING QUESADA PLAN C234**  
**BY THE TEXAS LATINO REDISTRICTING TASK FORCE,**  
**MALC AND CONGRESSMAN HENRY CUELLAR**

The Texas Latino Redistricting Task Force Plaintiffs (Latino Task Force), the Mexican American Legislative Caucus (MALC) and Congressman Henry Cuellar file this Response to advise the Court that Quesada Plan C234, which attempts to modify the compromise plan C226, reduces Latino ability to elect by lowering, across all elections, the voting strength of Latino

voters in the in the Democratic primary. For this reason, the above-named parties cannot support Plan C234.

In the Quesada proposed plan, both the Latino population and the Latino voting strength of CD 33 is reduced. The Hispanic voting age population in CD 33 drops from 61.3% in C226 to 54.8% in C234.<sup>1</sup> The Hispanic citizen voting age population in CD 33 drops from 39.4% in C226 to 35.2% in C234.<sup>2</sup> Anglo CVAP is increased from 33.5% in C226 to 34.2% in C234.<sup>3</sup> BCVAP is also increased from 24% in C226 to 27.6% in C234.<sup>4</sup> The SSVR drops 4 points between the two plans- 35.8% in C226 and 31.7% in C234.<sup>5</sup>

Along with the drop in the Hispanic population, the support for the Latino-preferred candidate in Democratic primaries is consistently reduced across all 9 elections analyzed by the Task Force.<sup>6</sup> The largest drop in support (1.84%) is in the 2010 Democratic primary election for Lieutenant Governor. In that race, support for the Latino-preferred candidate, Linda Chavez Thompson, is reduced from 52.26% in C226 to 50.42% in C234. Similarly, in 2008 support for the Latino-preferred candidate in the Democratic primary election for Justice of the Supreme Court Place 7 was reduced from 48.68% in C226 to 47.16% in C234.<sup>7</sup>

The Quesada Plaintiffs assert that this Court should modify the boundaries of the compromise CD 33 because the compromise district “retains the illegal fracturing of African-

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<sup>1</sup> C234 RED109 Report, Ex. 1; C226 RED109 Report [Ex. P-4 to Task Force Brief of 2/10, at Dkt. 638-20].

<sup>2</sup> *Id.*

<sup>3</sup> C234 RED106 Report, Ex. 2; C226 RED106 Report [Ex. P-3 to Task Force Brief of 2/10, at Dkt. 638-19].

<sup>4</sup> *Id.*

<sup>5</sup> C234 RED109 Report, Ex. 1; C226 RED109 Report [Ex. P-4 to Task Force Brief of 2/10, at Dkt. 638-20].

<sup>6</sup> C234 RED206 Report, Ex. 3; C234/C226 CD33 Plan Comparison, Ex. 4; C226 RED206 Report [Ex. P-7 to Task Force Brief of 2/10, at Dkt. 638-23].

<sup>7</sup> *Id.*

American neighborhoods, particularly in the City of Fort Worth.”<sup>8</sup> The Quesada Plaintiffs further assert that the Court should shift CD 33 in Plan C226 westwards into Ft. Worth to add 50,000 more non-Latinos.<sup>9</sup>

Because CD 33 in C226 already contains the required 698,488 individuals, the Quesada Plaintiffs’ proposal to shift CD 33 westwards necessarily forces the release of population from elsewhere in the district; in Quesada Plan C234, the population “shed” from the district is located in predominantly-Latino neighborhoods in the cities of Grand Prairie and Irving, thus reducing the districts’ Latino population and voting strength.

Thus, the fracturing of minority population of which the Quesada Plaintiffs complain is not remedied in their proposed CD 33 – the district is simply shifted to take in a different proportion of Latino and non-Latino voters. Quite simply, no one congressional district in the Metroplex can encompass all the minority population that is currently located outside the boundaries of the existing majority-minority CD 30.

A number of other plaintiffs have similarly suggested that CD 33 in C226 must be modified because it does not adequately encompass all of the minority population in the Dallas-Ft. Worth Metroplex.<sup>10</sup> As an initial matter, the Latino Task Force notes that the arguments of these plaintiffs are based on inaccurate descriptions of the demographic growth in the Dallas-Ft.

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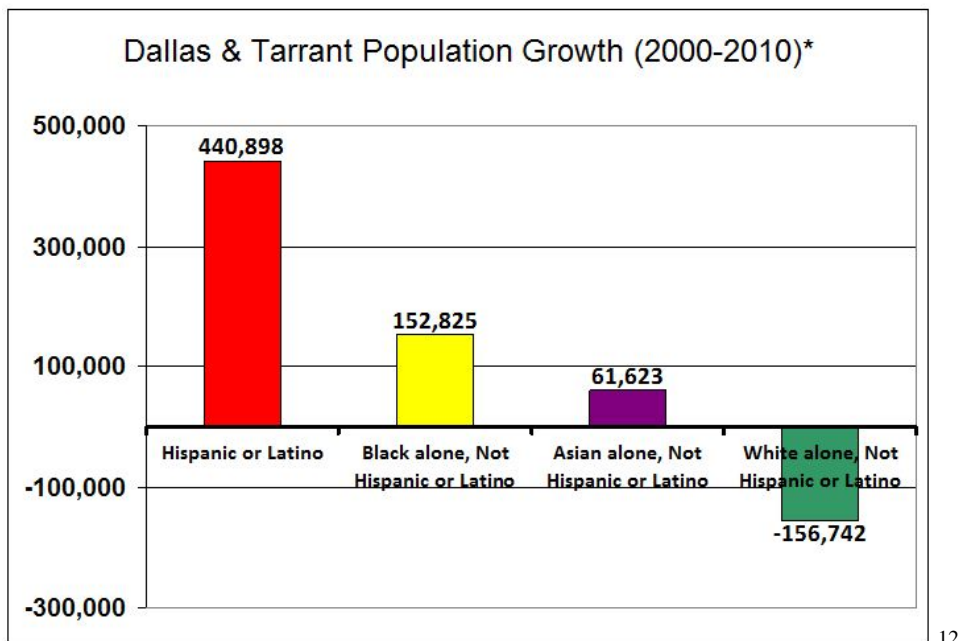
<sup>8</sup> Quesada Plaintiffs’ Supplemental Advisory on Proposed Interim Map C226 and on Quesada Plan C234 [“Quesada Supp. Advisory,” Dkt. 664] at 2.

To the degree the Quesada Plaintiffs’ objective includes the desire to include a viable African American candidate, Representative Mark Veasey, with the boundaries of CD 33, MALC would not object to the addition of VTD 1489 to the district since it is adjacent to the boundaries of CD 33 in C226 and contains Rep. Veasey’s residence.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> See Joint Advisory on Proposed Plan C226 Issues [“Rodriguez/Quesada Advisory,” Dkt. 659] at 8.

Worth Metroplex. As demonstrated below, Latinos constituted the overwhelming majority of population growth in this area from 2000 to 2010.<sup>11</sup>



According to the 2010 Census, in Dallas and Tarrant counties combined, Latinos constitute 33.25% of the total population and African Americans constitute 18.70% of the total population.<sup>13</sup>

The suggestion by plaintiffs who oppose CD 33 in the compromise plan, that CD 33 would not cure fracturing unless it additionally encompasses “over 200,169 African Americans,”

<sup>11</sup> The Quesada/Rodriguez advisory stated: “The number of Hispanics living in Dallas and Tarrant increased by over 260,000 persons. The number of African Americans increased by over 130,000. Meanwhile, the number of Anglos *decreased* by over 70,000.” (See Rodriguez/Quesada Advisory [Dkt. 659], at 8.)

<sup>12</sup> Task Force PowerPoint Presentation for Hearing on Interim Plans, Feb. 14, 2012 [Dkt. 656-1, at 45].

<sup>13</sup> U.S. Census Bureau Factfinder, Dallas and Tarrant County Total Population 2000 and 2010 [Ex. R to Task Force Brief of 2/10, at Dkt. 638-39].

is untenable and would force the exclusion of tens of thousands of Latino voters from the district.<sup>14</sup>

Excluding those who live in CD 30 in Plan C226, there are 1,146,662 Latinos and 468,199 African Americans living in Dallas and Tarrant counties. Taken together, there are 1,614,861 Latinos and African Americans living in Dallas and Tarrant counties and who are not included in the existing majority minority CD 30 in Plan C226.<sup>15</sup> The number of Latinos and African Americans left outside majority-minority districts in Plan C185 is more than twice the size of a congressional district. Any version of CD 33 that remedies fracturing is limited to 698,488 individuals and cannot encompass all of the minority voter population living outside of the existing CD 30.

The decision of the State of Texas, in response to Plaintiffs' not insubstantial claim of purposeful vote dilution through fracturing of the minority population, was to offer CD 33 in the compromise Plan C226. CD 33 in Plan C226 gathers together geographic areas previously fractured in C185 and reflects the policy choices of the State of Texas, including deference to maps offered by members of the Texas Republican congressional delegation. CD 33 in Plan C226 is not illegal because it includes a plurality of voters from the fastest-growing group in the region – Latinos – and the district is not required either by the Constitution or the Voting Rights Act to be modified to reduce the Latino population.

The plaintiffs who oppose CD 33 in the compromise plan claim simultaneously that CD 33 is a minority coalition district and that the district is legally defective unless it is modified to reduce the Latino voter population. The contradiction inherent in these statements is best

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<sup>14</sup> Rodriguez/Quesada Advisory [Dkt. 659] at 12.

<sup>15</sup> U.S. Census Bureau Factfinder, Dallas and Tarrant County Total Population 2000 and 2010 [Ex. R to Task Force Brief of 2/10, at Dkt. 638-39]; Plan C226 RED100 Population Report [Ex. P-2 to Task Force Brief of 2/10, at Dkt. 638-18].

explained by what these plaintiffs do not address – predicted Latino voting strength in the relevant party primary.

As demonstrated previously in this case, voting in the Democratic primary in Tarrant and Dallas counties is racially polarized between Latinos and non-Latinos.<sup>16</sup> Primary election voting in CD 33 in Plan C226 is also racially polarized between Latinos and non-Latinos.<sup>17</sup> In six racially-contested Democratic primary elections analyzed by the State of Texas, the State found that Anglos shared the candidate preference of Latino voters only once and African Americans shared the candidate preference of Latino voters only twice.<sup>18</sup> In nine racially-contested Democratic Primary elections analyzed by the Task Force, Latinos were able to nominate their preferred candidate in CD 33 in Plan C226 in three of the nine elections held between 2002 and 2010.<sup>19</sup>

The State and Latino Task Force election analyses for CD 33 in Plan C226 show that Latinos have increased their ability to nominate their preferred candidate over the past decade.<sup>20</sup> At this point, CD 33 in Plan C226 is best described as a “toss-up” for Latino voters in the Democratic primary. In the current context of racially polarized voting, modifying CD 33 to remove Latino voters would most certainly decrease the ability of Latino voters to nominate their preferred candidates in the primary.

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<sup>16</sup> Ex. E-7, Engstrom Corr. Rebuttal [Dkt. 307-1], at 12-15 [Dallas], 18-21 [Tarrant].

<sup>17</sup> Racially Polarized Voting Analysis for CD33 in C225, T-4, Ex. 5, at pp. 5-8; C234/C226 CD33 Plan Comparison, Ex. 4; C226 RED206 Report [Ex. P-7 to Task Force Brief of 2/10, at Dkt. 638-23].

<sup>18</sup> *Id.*

<sup>19</sup> C234 RED206 Report, Ex. 3; C234/C226 CD33 Plan Comparison, Ex. 4; C226 RED206 Report [Ex. P-7 to Task Force Brief of 2/10, at Dkt. 638-23].

<sup>20</sup> Racially Polarized Voting Analysis for CD33 in C225, T-4, Ex. 5, at pp. 5-8; C234 RED206 Report, Ex. 3; C234/C226 CD33 Plan Comparison, Ex. 4; C226 RED206 Report [Ex. P-7 to Task Force Brief of 2/10, at Dkt. 638-23].

The Latino Task Force has worked diligently throughout the litigation to carry its burden of proof with respect to Latino vote dilution. The State's compromise CD 33 offers a way for all plaintiffs' claims of fracturing to be resolved. The compromise CD 33 provides an equal opportunity for each minority group to nominate and elect its candidates of choice. Efforts by other plaintiffs to reduce Latino voting strength in CD 33, and capitalize on racially polarized voting to benefit non-Latino candidates in the Democratic primary can and should be rejected by this Court.

DATED: February 23, 2012

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that she has electronically submitted a true and correct copy of the above and foregoing via the Court's electronic filing system on the 23rd day of February, 2012. The undersigned counsel hereby certifies that she caused a true and correct copy of the above and foregoing to be mailed to the persons listed below by the close of the next business day.

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