

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

SHANNON PEREZ HAROLD, et al.)	
)	
Plaintiffs)	CIVIL ACTION NO:
-and-)	SA-11-CA-360-OLG-JES-XR
)	
MEXICAN AMERICAN LEGISLATIVE)	
CAUCUS, TEXAS HOUSE OF)	
REPRESENTATIVES (MALC))	
Plaintiffs)	
-and-)	
THE HONORABLE HENRY CUELLAR)	
Member of Congress, CD 28)	
)	
Plaintiff-Intervenor)	
v.)	
)	
STATE OF TEXAS; RICK PERRY,)	
In his official capacity as Governor of the)	
State of Texas and JOHN STEEN, Secretary)	
of State of the State of Texas,)	
Defendants)	

Plaintiff-Intervenor Congressman Cuellar's Second Amended Complaint in Intervention

1. This Court granted Congressman Cuellar's Motion to Intervene (Dkt. #42) and on September 6, 2013 (Dkt. #886) granted our motion to amend our pleadings. Movant now files the Second Amended Complaint in Intervention.
2. This is a redistricting lawsuit. This action is brought pursuant to § 2 of the Voting Rights Act, 42 U.S.C. § 1973 et seq., and the Fourteenth and Fifteenth Amendments to the United States Constitution, 42 U.S.C. § 1983. Plaintiff seeks declaratory and injunctive relief

against continued use of any congressional redistricting plan that dilutes the voting strength of Latinos and African Americans.

3. Plaintiff also seek relief under Section 3(c) of the Voting Rights Act, 42 U.S.C. § 1973a(c).
4. Plaintiff-Intervenor brings this action requesting declaratory and injunctive relief against the State of Texas.

I. JURISDICTION

5. Plaintiff-Intervenor's complaint arises under the United States Constitution and federal statutes. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 1988.
6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).
7. Plaintiff-Intervenor seeks declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.
8. Plaintiff-Intervenor requests the convening of a three-judge court pursuant to 28 U.S.C. § 2284.

II. PARTIES

9. Plaintiff Congressman Cuellar is a Latino voter from Webb County. He is a United States Congressman and is a member of the Congressional Caucus. Congressman Cuellar has been a strong advocate for the Latino Community and a leader on issues of importance to the South Texas Community.
10. Defendant is the State of Texas. The State of Texas is a political subdivision covered under the provisions of the Voting Rights Act and responsible for the actions of its officials with regard to state-wide redistricting.

11. Defendant Rick Perry is the duly elected and acting Governor of the State of Texas. Under Article IV, Section 1, of the Texas Constitution, he is the chief executive officer of the Defendant State of Texas. He is sued in his official capacity.

12. Defendant John Steen is sued in his official capacity as Secretary of State of the State of Texas. Defendant Steen is the State's chief election officer and as such is responsible for overseeing the conduct of elections within the State.

FACTS

13. During the 2011 redistricting cycle, the State of Texas adopted congressional plan C 185 as the Congressional Plan for future congressional elections;

14. According to the United States Supreme Court, court ordered redistricting plans should be drawn using the state adopted plan (C185) as the starting point and then modified in those areas in which minority rights were being violated, *Perry v. Perez*, 132 S. Ct. 934 at 941 (Jan. 20, 2012);

15. On March 19, 2012 this Court enjoined the State of Texas from using Plan C185 which was adopted by the Defendants during the 2011 Redistricting Process. The injunction ordered the use of Plan C235 for the 2012 elections as an Interim Court Ordered plan (Dkt#691). The injunction was based on this Court's finding that the voting rights claims asserted against C185 under Section 5 of the Federal Voting Rights Act (VRA), 42 USC 1973c, were "not insubstantial" and that C235 addressed some of the concerns (Dkt# 691, p1);

16. Plan C235 was patterned after C216 which was the bi-partisan plan submitted by intervenors Congressmen Cuellar and Conesco; it was the only plan submitted that used Plan

C185 as the starting point as required by *Perry, Id*, and then modified to address the voting rights concerns;

17. This Court's injunction allowed the use of C235 as the interim plan; the Court stated that while C235 addressed most of the voting rights concerns, there were remaining issues under Section 2 of the Voting Rights Act that would be addressed later in so far as the continued use of C235, (Dkt#691 at p.55);

18. After the 2012 elections, on August 28, 2012, the three judge court in the District of Columbia issued a comprehensive decision pursuant to Section 5 of the VRA finding that the State of Texas "intentionally discriminated" against minorities in the 2011 redistricting process, *Texas v. United States*, 887 F. Supp. 2d 133, 160-61 (D.D.C. 2012) (hereinafter referred to as the DDC opinion);¹

19. After the DDC opinion the Governor of Texas called the first 2013 Special Session during which the legislature was to consider adopting a final redistricting plan for future congressional elections;

20. During the public hearings of the special called session the State of Texas was urged by various parties to consider the DDC opinion as it considered adopting C235 as a permanent remedy plan in the context of this § 2 lawsuit;

¹ This decision was later vacated in *Shelby County, Alabama v. Holder, No. 12-96* (June 25, 2013) on unrelated grounds -- the coverage formula used in the Voting Rights Act was found to be unconstitutional; however, the Supreme Court made it clear that "We issue no holding on § 5 itself, only on the coverage formula." *Id* p. 24 slip opinion. The findings of fact and conclusions of law made by the three judge court in *Texas* were left undisturbed. This court can give those findings the appropriate consideration and we request that judicial notice of these findings be taken into consideration in this case.

21. On June 26, 2013, the Defendants ignored the DDC opinion, its finding of facts and conclusions of law, and adopted C235 (Dkt#768) as the permanent plan for future congressional elections;

22. The findings of the DDC opinion could have been addressed by the Texas Legislature in so far as the decisions impact on the continued use of C235; the State of Texas chose to ignore the opinion;

23. The specific DDC findings in *Texas v. United States*, 887 F. Supp. 2d 133 that should have been addressed and are incorporated herein as if fully stated include the following:

- a. 308 specific Findings of Fact and Law, *Id* at 197 through 247; these findings are incorporated herein so far as they related to the congressional districts;
- b. The finding of “intentional discrimination” against minorities’ by the State of Texas in the drawing of congressional districts, *Id* at 151 & 159;
- c. The 30 specific adverse findings concerning Texas’ drawing of CD 23, a Latino District, as intentionally drawn to “reduce the effectiveness of the Latino vote”, *Id* at 156 and 205 – facts and law #31 through #60 ;
- d. The findings concerning CD 20, another Latino District, in which the State of Texas intentional deletion of “economic engines” from the downtown area of the district, *Id* at 160;
- e. The legal protections concerning coalition and cross over minority districts, *Id* at 147;

24. These amended pleadings are directed at challenging the use of C235 on the same grounds as the original pleadings - Section 2 of the Voting Rights Act, 42 U.S.C. § 1973 et seq., and the Fourteenth and Fifteenth Amendments to the United States Constitution, 42 U.S.C. § 1983;
25. While this case was proceeding, the United States Supreme Court invalidated Section 5 of the Voting Rights Act, *Shelby County Alabama v. Holder*, 133 S. ct. 2612 (2013); therefore, these amended pleading also seek relief under Sec 3 (c) as a legal alternative to Section 5;
26. Section 3 (c) of the Voting Rights Act of 1965, 42 U.S.C. 1973a(c) authorizes a federal court, following a finding "that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision," may order that the jurisdiction preclear its election changes pursuant to Section 5. Section 3 (c) is a permanent provision of the federal Voting Rights Act.
27. These amended pleading amend the original pleading to include the process used in the adoption of C185 and the adoption of C235;
28. Upon information and belief, C235 contains the following minority districts:
 - a. Six (6) districts in which the Latino community will always elect the candidate of their choice – CD 15, 16, 20, 28, 29, and 34;
 - b. One (1) marginal district in which the Latino community will elect a candidate of their choice 3 out of 10 times – CD 23;
 - c. Three (3) districts in which the African American community will always elect a candidate of their choice – CD 30, 18 and 9;
 - d. One (1) combined minority district in which either the African American or Latino Community will elect a candidate of their choice – CD 33.

- e. One (1) crossover district in which Latinos will influence the outcome of the general election – CD 35;
29. The redistricting plan in place for Texas congressional districts prior to the 2011 redistricting cycle (the "2010 congressional benchmark") was ordered into effect on August 4, 2006 by the U.S. District Court for the Eastern District of Texas in *LULAC v. Perry* (No. 2:03-00354);
30. The historical background of Texas Congressional redistricting includes federal court orders revising Texas's redistricting plans, enacted in 2001 and 2003 respectively, to cure violations of the Federal Voting Rights Act;
31. According to the 2010 Census, the Latino population of Texas grew to 9,460,921 from 6,669,666 in the 2000 census. This was an increase of about 42%. According to the 2010 Census, the minority population of Texas comprised almost ninety percent (90%) of the growth. The Latino population accounted for the lion's share of the growth of the Texas Minority population;
32. In 2012, the US Census estimated that the population of Texas was 26,059,203 with a total Latino population of 38.2%; following the 2012 General Election, the Texas Legislative Council reported 13,122,046 registered voters in Texas; 10.3% of the voters are Spanish-surnamed;
33. Elections in Texas continue to be racially polarized;
34. Latinos generally vote as a group and are politically cohesive;
35. African Americans in Texas generally vote as a group and are politically cohesive.
36. Latinos and African Americans in Texas vote as a coalition and are politically cohesive.

37. Anglos in Texas generally vote as group, are politically cohesive and vote sufficiently as a block to defeat the preferred candidate of Latino and African American voters absent fair and equitable majority-minority single member districts. This has been documented hundreds of times by federal and state courts, the US Commission on Civil Rights and by the US Congress.

CLAIM FOR RELIEF – DISCRIMINATORY RESULT

38. The allegations contained hereinabove are re-alleged re-averred as if fully set forth herein.

39. The election practices and procedure used to apportion the United States Congressional Districts, violates the rights of Latino voters in violation of Section 2 of the Voting Rights Act as well as the 14th and 15th Amendments of the United States Constitution and 42 U.S.C. § 1983.

BASIS FOR EQUITABLE RELIEF

40. Currently Plaintiff-Intervenor has no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for declaratory judgment and injunctive relief is their only means of securing adequate redress from all of the Defendants' unlawful practices.

41. Plaintiff-Intervenor will continue to suffer irreparable injury from all of the Defendants' intentional acts, policies, and practices set forth herein unless enjoined by this Court.

ATTORNEYS FEES COSTS AND EXPENSES

42. This is an appropriate case for the assessment of attorney fees, costs and expenses.

PRAYER

Plaintiff Intervenor respectfully prays that this Court enter Judgment granting:

- A. A declaratory judgment that State Defendants' actions violate the rights of Plaintiff as protected by Section 2 of the Voting Rights Act, 42 U.S.C. § 1973 et seq. and that Defendants Perry violated the rights of Plaintiff as protected by the 14th and 15th Amendments to the United States Constitution and 42 U.S.C. § 1983;
- B. Preliminary and permanent injunctive relief requiring State Defendants, their successors in office, agents, employees, attorneys and those persons acting in concert with them and/or at their discretion - to develop redistricting plans that do not dilute Latino and minority voting strength for the United States House of Representatives, and to implement a districting plan and also enjoining and forbidding the use of a redistricting plan that dilutes the voting strength of minorities;
- C. An order requiring all Defendants to comply with Sections 2 and Section 3 (c) requirements of the Voting Rights Act;
- E. The costs of this suit and reasonable attorneys fees and litigation expenses, including expert witness fees and expenses, pursuant to 42 U.S.C. §§ 1973l(e) and 1988.
- F. An order of this Court retaining jurisdiction over this matter until all Defendants have complied with all orders and mandates of this Court; and
- G. Such other and further relief as the Court may deem just and proper.

DATED: September 12, 2013

Respectfully Submitted,

ROLANDO L. RIOS
115 E. Travis, Suite 1645
San Antonio, Texas 78205
Ph: (210) 222-2102
Fax: (210) 222-2898
E-mail:rios@rolandorioslaw.com

By: Rolando L. Rios
ROLANDO L. RIOS
SBN: 16935900
Attorney for Plaintiff-Intervenor
The Law Offices of Rolando L. Rios
The Milam Building

CERTIFICATE OF SERVICE

I certify that on this a true and correct copy of this Cuellar Second Amended Complaint in Intervention has been served upon the Defendants using the electronic filing system.

By: Rolando L. Rios
Rolando L. Rios