

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.	§	

LULAC INTERVENORS THIRD AMENDED COMPLAINT

The LULAC plaintiffs supplement and amend their First Amended Complaint and, and in doing so, adopt their allegations that the 2011 congressional redistricting was based on intentional race-based actions violating the United States Constitution’s Fourteenth and Fifteenth Amendments.

Introduction

1. In its first called special session, the 83rd Texas Legislature passed Senate Bill 4 (“SB 4”), redistricting Texas congressional districts in a plan denominated Plan C235. SB 4 also repealed the congressional redistricting plan, denominated Plan C185, enacted and signed into law in 2011. The Governor signed SB 4 on June 26, 2013; under the Texas Constitution, it becomes effective as a matter of state law on September 24, 2013.

Plaintiffs allege that Plans C185 and C235 violate rights guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution and by Section 2 of the federal Voting Rights Act. Accordingly, plaintiffs seek a declaration that Plans C185 and if necessary C235’s congressional districts are invalid and an injunction prohibiting defendants from calling, holding, supervising, or taking any action concerning primary or general elections for Texas members of the United States House of Representatives based on Plan C235.

In addition, in order to enforce the voting guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution, plaintiffs seek equitable relief under Section 3(c) of the Voting Rights Act whereby the Court would retain jurisdiction for an appropriate period during which no state-level change in districting and, as appropriate, other electoral standards and practices from those in force or effect in 2011 when this case commenced may be enforced unless and until this Court or the United States Attorney General determines that such change has neither the purpose nor the effect of denying or abridging the voting rights of minority voters.

Parties

2. The following plaintiffs bring this suit:
 - a. The League of United Latin American Citizens (“LULAC”), founded in 1929, is the oldest and largest Latino civil rights organization in the United States. LULAC is a non-profit organization with presence in most of the fifty states and Puerto Rico. LULAC has chapters in almost all counties in Texas and individual members in almost all of the counties. LULAC has long been active in representing Latinos and other minority interests in all regions of the state through advocacy and litigation.
 - b. Plaintiff, Gabriel Y. Rosales, is a member of LULAC Council 4819 and a registered voter, with his address at 231 One Oak, San Antonio, TX 78228.
 - c. Plaintiff, Belen Robles, is a member of LULAC Council 9 and a registered voter, with her address at 3336 Fillmore, El Paso, TX 79930.
 - d. Plaintiff, Ray Velarde, is a member of LULAC Council 20 and a registered voter, with his address at 1216 Montana Ave., El Paso, TX 78202.
 - e. Plaintiff, Johnny Villastrigo, is a member of LULAC Council 4604 and a

registered voter, with his address at 608 Van Buren, Wichita Falls, TX 76301.

- f. Plaintiff, Bertha Urteaga, is a member of LULAC Council 4967 and a registered voter, with her address at 514 That Way St., #1913, Lake Jackson, TX 77566.
- g. Plaintiff, Baldomero Garza, is a member of LULAC Council 4967 and a registered voter, with his address at 6502 Sterling Canyon Drive, Katy, TX 77450.
- h. Plaintiff, Marcelo H. Tafoya, is a member of LULAC Council 4858 and a registered voter, with his address at 2908 Overdale Road, Austin, TX 78723.
- i. Plaintiff, Raul Villaronga, is a member of LULAC Council 4535 and a registered voter, with his address at 602 Trout Cove, Killeen, TX 76542.
- j. Plaintiff, Asenet T. Armadillo, is a member of LULAC Council 1 and a registered voter, with her address at 2838 Coleman, Corpus Christi, TX 78405.
- k. Plaintiff, Elvira Rios, is a member of LULAC District 13 and a registered voter, with her residence in Hidalgo County.
- l. Plaintiff, Patricia Mancha, is a member of LULAC Council 4871 and a registered voter, with her address at 3827 Stockton Lane, Dallas, TX 75287.

3. Defendants are the Governor of Texas, the Lieutenant Governor of Texas, the Speaker of the Texas House of Representatives, the Secretary of State of Texas, the State of Texas itself, the Chair of the Texas Democratic Party, and the Chair of the Republican Party of Texas. All of the defendant officials are sued in their official capacity only. The Chairs of the two political parties are made defendants only for purposes of remedy, and no recovery of attorney fees is sought as to them. The residences of the state officials, in their official capacity, are all in Travis County, as the seat of government of the State of Texas is in the City of Austin. *See* Tex. Const. art. III, § 58. All the defendants, through their counsel, have entered appearances in this case.

Jurisdiction and venue

4. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), 1343(a)(4), 1357, 2201, 2202, and 2284. Venue is proper in this district under 28 U.S.C. § 1391(b) and in this division under 28 U.S.C. § 124(d)(4).

Factual background

5. Until this Court's adoption of an interim congressional plan for purposes of the 2012 elections, the last legally operative congressional districting plan for Texas, containing thirty-two districts, was known as Plan C100. It had been in effect since an order issued on August 4, 2006, by the United States District Court for the Eastern District of Texas in *LULAC v. Perry*, No. 2:03CV158. It had three districts—CDs 9, 18, and 30—that the state has classified as African-American opportunity districts within the meaning of Section 2 of the Voting Rights Act of 1965, as amended (“VRA”), 42 U.S.C. § 1973 (generally referred to as “Section 2”). It also had seven districts—CDs 15, 16, 20, 23, 27, 28, and 29—that the state classified as Latino opportunity districts under Section 2 of the VRA. One of these districts was in Harris County. The other six were in an arc generally running from El Paso, along the Rio Grande River to Brownsville, up to Corpus Christi, and over to San Antonio (termed elsewhere in this pleading the “South Texas Region”).

6. The official results of the 2010 census were released on December 21, 2010. On January 5, 2011, the President of the United States, pursuant to 2 U.S.C. § 2a(a), transmitted to Congress a statement showing the population of each of the fifty states, including the defendant State of Texas, as reported in the 2010 census. These population figures show that the State of Texas contains 25,145,561 persons and was entitled to 36 congressional representatives, an increase of four since the reapportionment after the 2000 census.

7. Texas's total population growth in the decade between the 2000 census and the 2010 census was 4,293,741. Of these additional residents: 2,791,255 were Latino; 522,570 were African-American; 464,032 were Anglo; and 401,144 were Asian-American. These tabulations mean that: Latinos accounted for 65.0% of the state's growth; African-Americans for 12.2%; Anglos for 10.8%; and Asian-Americans for 9.3%. Anglos are now 45.3% of the state's population; Latinos, 37.6%; African-Americans, 11.5%; and Asian-Americans, 3.8%. According to calculations of the Texas Legislative Council, Latinos account for approximately 24.7 % of the citizen voting age population of the state. Had the overall Texas population grown at the same rate as its Anglo population, the state would not have gained any additional congressional seats and likely would have actually lost a congressional district.

8. As required by the Texas Constitution, the 82nd Texas Legislature convened in regular session on January 11, 2011. On or about February 17, 2011, the Governor and the Texas Legislature received the official 2010 census population numbers for the State of Texas, sufficient to perform the task of congressional redistricting during the now-concluded regular legislative session. The legislature adjourned its regular session *sine die* on May 30, 2011, without enacting a new congressional redistricting plan.

9. The Governor called a special session of the 82nd Texas Legislature and included congressional redistricting as an item in the special session call. The special session convened on May 31, 2011, and adjourned *sine die* on June 29, 2011.

10. Legislation establishing new congressional district lines was passed during the first called special session of the 82nd Texas Legislature. Article II of the new legislation established a redistricting plan—designated Plan C185—for Texas congressional seats. This redistricting plan was designed to cover primary and general elections to federal congressional seats begin-

ning with the 113th United States Congress, which convened in January 2013. The Governor signed the bill into law in July 2011.

11. At the time, the State of Texas by virtue of the coverage formula in Section 4 of the VRA, was a covered jurisdiction under Section 5 of the VRA, 42 U.S.C. § 1973c (generally referred to as “Section 5”). The Supreme Court subsequently declared Section 4 unconstitutional on June 25, 2013, in *Shelby County v. Holder*, No. 12-96, saying it can no longer be used as the trigger mechanism for Section 5.

12. Plan C185 never became operative as a matter of federal law. A three-judge federal district court in the District of Columbia—in the case of *Texas v. United States*, Civ. Action No. 1:11cv1303—issued an opinion and judgment on August 28, 2012 (with errata corrections on August 30, 2012) denying Section 5 preclearance to Plan C185 on grounds of intentional racial discrimination and retrogression.

13. The state appealed the District of Columbia judgment and preclearance denial to the Supreme Court of the United States, but neither sought nor obtained a stay of the judgment. Before June 27, 2013, when the Supreme Court acted on the state’s appeal, the 83rd Texas Legislature enacted, and the Governor signed into law on June 26, 2013, a new redistricting plan for Texas congressional districts denominated Plan C235. This legislation, enacted during the first called session after the 2013 regular session, also repealed the statute enacting Plan C185.

14. Due to Plan C185 not being operative as law, this Court had to fill the legal vacuum by adopting an interim redistricting plan. This court-ordered interim plan—Plan C235—was for use only in the 2012 election cycle.

15. In calling the first special session of the 83rd Texas legislature, the Governor expressly confined the legislature to considering enactment of only one plan concerning Congressional dis-

tricts: interim Plan C235. The legislature acceded to the Governor's limited call by enacting Plan C235 without any changes whatever. Because it did not receive two-thirds favorable vote in the legislature, the enacted congressional plan will not be effective as state law until late September 2013.

16. Plan C235 fails to satisfy the requirements of the equal protection component of Section 1 of the Fourteenth Amendment to the United States Constitution and Section 1 of the Fifteenth Amendment to the United States Constitution in at least the following particulars:

- a. Plan C235 purposefully fragments Latinos in all regions of the state, dispersing them among numerous districts without regard to traditional and neutral redistricting principles, to reduce and lessen their electoral opportunities in congressional election significantly below the level of opportunities that would be available to Latinos were traditional and neutral redistricting principles followed. This fragmentation is done for the purpose of providing undue voting advantages and weight to Anglo voters across the state. In contrast, Plan C235 is intentionally crafted to allow Anglo voters to dominate districts beyond what their voting power and geographic distribution would otherwise suggest using traditional and neutral redistricting principles even as the legislature actively worked to disregard traditional and neutral redistricting principles to ensure that minority voters could not dominate or even be meaningful voting participants in any district not otherwise formally recognized as a minority opportunity district.
- b. Plan C235 purposefully fragments a politically cohesive coalition of African-American and Latino voters in the Dallas-Fort Worth Metroplex, and in the Harris County area in disregard of traditional and neutral redistricting principles, to reduce and lessen the

electoral opportunities of minority voters in the area in congressional election and to give undue advantage to Anglo voters.

- c. Plan C235 isolates the Latino voting community in Nueces County, which is 60.6 Latino, in an overwhelmingly Anglo district stretching to the outskirts of Travis County. This action was intended to sever the large Latino voting community of Nueces County from other significant groups of Latino voters in the South Texas Region to keep from forming an additional Latino opportunity district and to provide undue advantages and weight to Anglo voters in Nueces County and other parts of CD 27 and to maintain the Anglo incumbent, who was not elected as the candidate of choice of Latino voters, in office.
- d. Plan C235, for no compelling reason, uses race as a tool to purposely dismantle and destroy an existing crossover district—former CD 25—anchored in Travis County and the City of Austin and the tri-ethnic voting coalition there. The overriding purpose of this racially-based dismantlement was to fragment the existing and operative tri-ethnic coalition so that a cohesive minority voting community of African-Americans and Latinos could not vote together with a community of Anglos crossing over to vote for the candidate of choice of the African-American and Latino voting coalition in order to continue electing their candidate of choice in congressional elections. In so carving up the residents of Travis County and Austin, the legislature disregarded traditional and neutral redistricting principles, which, if followed, would have included at least one, and possibly more, districts firmly anchored in the city and county as well as eliminating the possibility that as many as two additional districts that would be in excess of 50% Hispanic citizen majority .

- e. Plan C235 purposely continues in place a race-based redrawing of the historic CD 20, along held by Latino incumbents elected as the candidate of choice of Latino voters, so that iconic elements of the district, such as the Alamo, and significant economic institutions are removed from the district in disregard of traditional and neutral redistricting principles.

17. Plans C185 and C235 fail to satisfy the requirements of the VRA's Section 2 in at least the following particulars:

- a. In the South Texas Region, while still honoring the requirements of the Fourteenth and Fifteenth Amendments, at least one, and possibly two, congressional districts could have been formed, and solidly anchored there, that would have contained a reasonably compact population of Latinos who are citizens of voting age who would constitute at least 50% of the citizen voting age population of the district. In this area, the Latino voters are politically cohesive and the majority Anglo voters vote sufficiently as a bloc to enable them, in the absence of special circumstances, usually to defeat the preferred candidate of the Latino voters. These facts coexist with other circumstances in the area—including a history of official discrimination with respect to the opportunity of Latinos to exercise the right to vote, a lack of responsiveness on the part of elected officials to the particularized needs of Latinos, and the tenuous nature of the justification for the congressional district lines drawn in the area—to provide a less than equal opportunity for the Latinos there to participate in the political process and to elect congressional representatives of their choice.
- b. Still in the South Texas Region—specifically, the geographic area roughly encompassed by former CD 23 and Plan C235's CD 23—Plan C235 fails to establish CD 23

as a reasonably performing Latino opportunity district. While honoring the basic geographic contours embraced by current CD 23, and still creating an additional Latino opportunity district as addressed in ¶ 19.a, the legislature had available to it a reasonably compact population of Latinos who are citizens of voting age who would constitute at least 50% of the citizen voting age population of the district. In this area, the Latino voters are politically cohesive and the majority Anglo voters vote sufficiently as a bloc to enable them, in the absence of special circumstances, usually to defeat the preferred candidate of the Latino voters. These facts coexist with other circumstances in the area—including a history of official discrimination with respect to the opportunity of Latinos to exercise the right to vote, a lack of responsiveness on the part of elected officials to the particularized needs of Latinos, and the tenuous nature of the justification for the congressional district lines drawn in the area—to provide a less than equal opportunity for the Latinos there to participate in the political process and to elect congressional representatives of their choice.

- c. Plan C235 fails to create in the Dallas Forth Worth Metroplex an additional minority opportunity district, separate and apart from CD33, composed of an operative and cohesive coalition of African-American and Latino voters. The legislature had available to it a reasonably compact population of African-Americans and Latinos who are citizens of voting age who would constitute at least 50% of the citizen voting age population of the district. In this area, the African-American and Latino voters are politically cohesive and the majority Anglo voters vote sufficiently as a bloc to enable them, in the absence of special circumstances, usually to defeat the preferred candidate of the coalition of African-American and Latino voters. These facts coexist with other circumstances in the

area—including a history of official discrimination with respect to the opportunity of African-Americans and Latinos to exercise the right to vote, a lack of responsiveness on the part of elected officials to the particularized needs of African-Americans and Latinos, and the tenuous nature of the justification for the congressional district lines drawn in the area—to provide a less than equal opportunity for the coalition of African-Americans and Latinos there to participate in the political process and to elect congressional representatives of their choice.

d. The 2012 election results showed that, as had been contended by the Quesada plaintiffs from the outset of this case (see Quesada First Amended Complaint (Dkt. #84-1 at ¶s 45, 46 and 56), the African-American population in the Dallas-Fort Worth region was sufficiently large and geographically compact to support the creation of a second African-American ability to elect district in that area (in addition to the pre-existing District (CD 30) held by Congresswoman Eddie Bernice Johnson). In the 2012 elections, African-American voters in District 33 demonstrated an effective ability to elect their preferred candidate of choice to Congress, African-American Marc Veasey (one of the original plaintiffs in the Quesada v. Perry suit). African-American candidate Veasey was the overwhelming candidate of choice of African American majority in both the Democratic primary and runoff elections. In both the primary and runoff, African-American voters comprised a majority of the voters in CD 33 who cast ballots (63% in the primary and 53% in the runoff). Veasey prevailed in the general election, with an estimated 99%

of the African American voters casting their ballots for Veasey and an estimated 95% of Hispanics doing so.

68. Although CD 33 performed as an African American ability to elect district in the 2012 election cycle, the minority population in the DFW region remains fractured, containing large pockets of minority population that are stranded in districts dominated by Anglo bloc voters. So while the interim plan did rearrange the DFW region, the State's intentional fracturing of the minority population was not fully addressed and cured. Indeed, it is possible, as the Quesada plaintiffs (and others) have demonstrated in their alternative plans, to create in the DFW region two African-American ability to elect districts and a third district which would provide Latino voters with an effective ability to elect their preferred candidate

e.. The court-ordered interim plan, while an improvement over the state's 2011 enacted plan (C185), still contains several features that dilute minority voting strength and are remnants or perpetuate the state's intentional discrimination against minority voters.

18. Plan C235 continues the State of Texas's consistent and repeated practice of engaging in intentional discrimination on the basis of race in its design of electoral districts and other statewide electoral actions. These violations, including one or more of those alleged in paragraph 16, above, reflect intentional racial discrimination and violations of the Fourteenth and Fifteenth

Amendments in derogation of the current conditions for minority voters in the state. Therefore, they justify the imposition of equitable relief authorized by the VRA's Section 3(c).

Causes of action

Count 1: VRA Section 2

19. The facts alleged herein constitute a denial or abridgement of the plaintiffs' right to vote for their representative to the United States House of Representatives, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

Count 2: Equal protection

20. The facts alleged herein constitute a denial to the plaintiffs of rights guaranteed by the Equal Protection Clause of Section 1 of the Fourteenth Amendment to the United States Constitution.

Count 3: Constitutional right to vote

21. The facts alleged herein constitute a deprivation of the plaintiffs' rights under the Fifteenth Amendment to the United States Constitution.

Count 4: Section 3(c) injunction

22. The facts alleged herein establish that the Court should grant equitable relief authorized by the VRA's Section 3(c), 42 U.S.C. § 1973a(c). LULAC incorporates its joint motion and accompanying Memorandum of Law pursuant to sec. 3(c). (Dkt. 884). For brevity LULAC will not repeat herein.

Prayer for relief

23. Based upon the foregoing matters, the plaintiffs pray that this Court:

- a. Continue to assume jurisdiction over this action as a three-judge District Court pursuant to 28 U.S.C. § 2284;

- b. Enter a declaratory judgment that the Texas congressional districts in Plans C185 and C235 violate the plaintiffs' rights under the United States Constitution and federal law, as alleged under ¶¶ 19-22, above;
- c. Enter an injunction that the State of Texas is required for not less than the next ten years to obtain preclearance, before implementation, from either this Court or the Attorney General of the United States for any state-level redistricting changes, and such other state-level electoral changes as the Court adjudges appropriate, from electoral practices and standards in force or effect as of May 9, 2011;
- d. Grant plaintiffs appropriate injunctive relief enjoining the defendants, their officers, agents, employees, attorneys, successors in office, and all persons in active concert or participation with them, from any implementation or use of Plan C235 in primary and general elections until and unless the injunction sought in paragraph 25.c is satisfied and the legal violations found with respect to Plan C235 are remedied by the Texas Legislature by a date certain or by this Court :
- e. Grant the plaintiffs their reasonable attorney fees, litigation expenses, and costs in maintaining this action; and
- f. Grant the plaintiffs such further relief as may be necessary, appropriate, and equitable.

