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. SA-11-CA-360-OLG-JES-XR [Lead case]
MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES (MALC), *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, *et al*., *Defendants.*	CIVIL ACTION NO. SA-11-CV-490-OLG-JES-XR [Consolidated case]

MARAGARITA V. QUESADA, *et al*.,	)	CIVIL ACTION NO.
	)	SA-11-CA-592-OLG-JES-XR
Plaintiffs,	)	[Consolidated case]
	)	
v.	)	
	)	
RICK PERRY, *et al.,*	)	
Defendants.	)	
	)	
JOHN T. MORRIS,	)	CIVL ACTION NO.
	)	SA-11-CA-615-OLG-JES-XR
Plaintiff,	)	[Consolidated case]
	)	
v.	)	
	)	
STATE OF TEXAS, et al.,	)	
	)	
Defendants.	)	
	)	
EDDIE RODRIGUEZ, et al.	)	CIVIL ACTION NO.
	)	SA-11-CA-635-OLG-JES-XR
Plaintiffs,	)	[Consolidated case]
	)	
v.	)	
	)	
RICK PERRY, et al.,	)	
	)	
Defendants.	)	

QUESADA PLAINTIFFS' THIRD AMENDED COMPLAINT

Plaintiffs MARGARITA V. QUESADA, ROMEO MUNOZ, MARC VEASEY, JANE HAMILTON, LYMAN KING, JOHN JENKINS, KATHLEEN MARIA SHAW, DEBBIE ALLEN, JAMAAL R. SMITH, and SANDRA PUENTE, allege:

I. Introduction

1. On June 15, 2011, the Texas Legislature enacted Senate Bill 4 (S.B. No. 4, as amended), which purported to establish a new congressional redistricting plan for the State of Texas (hereafter, "Plan C185" or "the State's 2011 Congressional Plan" or the State's 2011 Plan").

2. Plaintiffs filed this action seeking declaratory and injunctive relief to prevent Defendants from using the State's 2011 Congressional Plan in any future elections. Plaintiffs brought this action pursuant to the United States Constitution and 42 U.S.C. § 1983, as well as 42 U.S.C. §1973 (Section 2 of the Voting Rights Act of 1965, as amended) and 42 U.S.C. § 1973c (Section 5 of the Voting Rights Act of 1965, as amended). The State's 2011 Congressional Plan would have harmed minority voters, including Plaintiffs, in several discrete ways. The injury to African-American and Hispanic voters throughout the State caused by the reconfiguration of the congressional districts in the State's 2011 Congressional Plan was neither necessary nor justified.

3. The State's 2011 Congressional Plan was drawn to insure that population gains in minority communities (primarily African-American and Hispanic) from 2000 to 2010 did not afford minority voters increased electoral opportunity under the State's Plan. Though minority communities accounted for nearly 90% of population growth between 2000 and 2010, and Texas received four additional congressional seats because of that explosive population growth, minority voters only were afforded an effective ability to elect a candidate of choice in only one of the four new districts created under the State's Plan. And though the Anglo population now comprises only 45% of Texas' total population, Anglos would have controlled 72% of Texas' congressional districts under the State's 2011 Congressional Plan. This configuration constituted an unlawful dilution of minority voting strength under Section 2 of the Voting Rights Act, and the Fourteenth and Fifteenth Amendments to the United States Constitution.

4. The State's 2011 Congressional Redistricting Plan was drawn with the purpose, and had the effect, of minimizing and reducing the strength of minority populations in Texas. While the pre-2011 congressional map contained eleven effective minority opportunity districts, the State's 2001 Congressional Plan contained only ten such districts. Reducing the number of effective minority opportunity districts in the face of minority population growth was intentional discrimination in violation of Section 2 of the Voting Rights Act, and the Fourteenth and Fifteenth Amendments to the United States Constitution. Such a reduction of effective minority opportunity districts also constituted unlawful retrogression under Section 5 of the Voting Rights Act. The State's 2011 Plan also violated Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, by significantly minimizing the opportunities for African-American and Hispanic voters to participate in the political process and to elect Representatives of their choice.

II. Jurisdiction and Venue

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1357, and 2284; and pursuant to 42 U.S.C. §§ 1973c, 1973j(f). Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201, 2202, and 2284, as well as by Rules 57 and 65 of the Federal Rules of Civil Procedure. Venue is proper pursuant to 28 U.S.C. §§ 1391(b).

III. Parties

6. Plaintiffs are citizens and registered voters residing in the current congressional Districts 6, 9, 18, 20, 24, 29, 30 and 33. Plaintiffs have standing to bring this action under 42 U.S.C. § 1983 to redress injuries suffered through the deprivation, under color of state law, of rights secured by the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973, 1973c, and by the United States Constitution.

7. Plaintiff MARGARITA V. QUESADA is an Hispanic citizen and a registered voter whose address is 875 Marquette Drive, San Antonio, Texas 78228. She resides in the current District 20 and under the State's Plan would reside in proposed District 20.

8. Plaintiff ROMEO MUNOZ is an Hispanic citizen and a registered voter whose address is 4157 Astoria, Irving, Texas 75062. He resides in current District 24 and under the State's Plan would reside in proposed District 24.

9. Plaintiff MARC VEASEY is an African-American citizen and a registered voter whose address is 8224 Longfellow Lane, Fort Worth, TX 76120. He resides in current District 33 in the court-approved interim plan (and under the State's 2011 Plan would have resided in proposed District 12). Plaintiff VEASEY is also the duly elected Congressman in Congressional District 33.

10. Plaintiff JANE HAMILTON is an African-American citizen and a registered voter whose address is 1111 South Akard St., Unit 310, Dallas, TX 75215. Plaintiff HAMILTON resides in current District 30 and under the State's Plan would reside in proposed District 30.

11. Plaintiff LYMAN KING is an African-American citizen and a registered voter whose address is 2600 Piazza Court #5, Grand Prairie, TX 75054. Plaintiff KING resides in current District 24 and under the State's Plan would reside in proposed District 6.

12. Plaintiff JOHN JENKINS is an African-American citizen and a registered voter whose address is 6723 Smallwood, Arlington, Texas 76001. Plaintiff JENKINS resides in current District 6 and under the State's Plan would reside in proposed District 33.

13. Plaintiff KATHLEEN MARIA SHAW is an African-American citizen and registered voter whose address is 812 Parkside Drive, Cedar Hill, TX 75104- 3144. She resides in the current 24th Congressional District and under the State's Plan would reside in Congressional District 30.

14. Plaintiff DEBBIE ALLEN is an African-American citizen and a registered voter whose address is 1514 Pleasantville Drive, Houston, TX 77029. She resides in the current Congressional District 18 and under the State's Plan would reside in proposed District 18.

15. Plaintiff JAMAAL R. SMITH is an African-American citizen and a registered voter whose address is Windriver Park Townhomes, 3901 Woodchase Drive Unit 36, Houston, Texas

77042. He resides in the current Congressional District 9 and under the State's Plan would reside in proposed District 9.

16. Plaintiff SANDRA PUENTE is an Hispanic citizen and a registered voter whose address is 608 Wainwright Street, Houston, TX 77022. She resides in the current Congressional District 29 and under the State's Plan would reside in proposed District 29.

17. Defendant RICK PERRY is the Governor of the State of Texas and chief executive officer of the State of Texas. Defendant PERRY is sued in his official capacity.

18. Defendant JOHN STEEN is Texas Secretary of State. Defendant STEEN is sued in hIS official capacity. Defendant STEEN is responsible for administering and supervising the elections of United States Representatives from the State of Texas.

IV. Facts

Reapportionment

19. Every ten years, under 2 U.S.C. § 2a, the President of the United States must transmit to Congress a statement showing the number of persons in each state and the number of representatives to which the state is entitled. These figures are tabulated according to the federal decennial census.

20. On or about December 21, 2010, the Secretary of Commerce of the United States reported to the President of the United Sates the tabulation of population for each of the fifty states, including the State of Texas, as determined in the 2010 decennial census.

21. Under 13 U.S.C. § 141, commonly referred to as ―Public Law 94-171,‖ the Secretary of Commerce was required, by April 2, 2011, to complete, report, and transmit to each state the detailed tabulations of population for specific geographic areas within each state. States ordinarily use the P.L. 94-171 data to redraw Congressional districts.

22. The United States Bureau of the Census delivered to Texas Governor Rick Perry and the leaders of the Texas legislature the official Census 2010 Redistricting Data Summary File pursuant to P.L. 94-171.

23. Because of demographic changes recorded in the 2010 U.S. census, Texas received four additional congressional districts during this reapportionment. The four additional seats gave Texas a total allotment of 36 congressional seats.

24. The demographic changes that occurred in Texas and were recorded in the 2010 U.S. census were driven by explosive growth in the state's Hispanic and African-American populations. Hispanic growth was responsible for 65% of the state's population growth, and non-Anglo population accounted for approximately 90% of the State's overall population growth. The Latino population grew at 10 times the rate of the Anglo population, and the African American population grew at more than 5 times the rate of the Anglo population.

25. Today, Texas is a majority-minority state; only 45% of its total population is Anglo.

The Voting Rights Act

26. Section 2 of the Voting Rights Act, 42 U.S.C. §1973 prohibits any new redistricting plan that dilutes the voting strength of minority communities. Where minority communities have diminished opportunity to elect candidates of their choice, their voting strength has been diluted, and so unlawfully abridged under Section 2 of the Act.

27. On September 25, 1975, the Voting Rights Act of 1965 was extended and amended to cover the State of Texas. State and political subdivisions covered by the Act must comply with certain procedures under the Act, as amended, 42 U.S.C. §1973(c). Among them was the Section 5 preclearance requirement that certain States and political subdivisions must show that any new redistricting plan ―does not have the purpose and will not have the effect of denying or abridge the right to vote on account of race or color or membership in a language minority group. To make this showing, Texas was required to demonstrate that those drafting its redistricting plan did not possess racially discriminatory intent, and that the adopted plan did not cause a retrogressive effect with respect to minority voting strength.

28. On June 25, 2013, the Supreme Court decided *Shelby County v. Holder*, 570 U.S. ___, 2013 WL 3184629 (U.S. June 25, 2013) (No. 12-96). In *Shelby County*, the Supreme Court held that the coverage formula in Section 4(b) of the Voting Rights Act, as reauthorized by the Voting Rights Act Reauthorization and Amendments Act of 2006, is unconstitutional and "can no longer be used as a basis for subjecting jurisdictions to preclearance" under Section 5 of the Act. *See* slip. op. at 24. The Supreme Court indicated it was issuing no holding on Section 5 itself, only on the coverage formula. *Id*. Consequently, Texas is no longer a covered jurisdiction as defined in Section 4 of the Act.

The Racially Discriminatory Redistricting Process in Texas in 2011

29. The State's 2011 Redistricting Plan was developed without any meaningful input from the minority population's representatives of choice or the general public. During the regular legislative session, for example, only one hearing on congressional redistricting was convened in the House redistricting committee and only one hearing was convened in Senate redistricting committee. No plan was presented in either hearing. Thus, there were no opportunities for members of the general public or representatives of communities of color to have any input into the development of the State's 2011 Plan.

30. Legislators who represent communities of color were not permitted to discuss the plan with Republican leadership until after that leadership had already agreed to a map. Governor Perry signaled that this exclusion was intentional in discussions with a Texas Tribune reporter. On May 28, 2001, the Tribune reported that Governor Perry would only call legislators back into special session—when they get to an agreed bill.

31. Minority members of the House and Senate, and minority members of the two legislative redistricting committees, never saw the state's 2011 plan until it was made public on Tuesday, May 31, 2011.

32. Despite the absence of meaningful participation for officials representing minority communities, the Texas Legislature enacted the plan into law on June 15, 2011.

The Pre-2011 Baseline Map

33. The congressional map that existed as of 2010 ("C100") was a thirty-two district map that had eleven districts in which minority voters had successfully elected candidates of choice within the past decade.

34. Of the eleven minority opportunity districts in C100, seven were effective Hispanic opportunity districts. Those Districts were: 15th – Hinojosa; 16th – Reyes; 20th – Gonzalez; 23rd – Canseco; 27th – Farenthold; 28th – Cuellar; and the 29th – G. Green.

35. Although Districts 23 and 27 in Plan C100 did not elect the Hispanic candidate of choice in the 2010 election, they did elect the Hispanic candidate of choice in every previous election.

36. Of the eleven existing minority opportunity districts in Plan C100, three were effective African-American opportunity districts. Those Districts are: 9th – A. Green; 18th – Jackson Lee; and the 30th – Johnson.

37. Of the eleven existing minority opportunity districts, one district allowed a coalition of minority voters and like-minded Anglo voters to elect a candidate of choice. That District is the 25th – Doggett.

The State's Proposed 2011 Map (C185), Viewed Statewide

38. Under the State's 2011 proposed Congressional plan (C185), Anglo voters would have controlled 72% of Texas' congressional districts and three of the four new congressional districts.

39. Under Plan C185, only ten districts provided minority voters with an effective opportunity to elect candidates of choice, one less than the previous plan (C100). This was so, despite the four additional congressional seats that Texas received as a direct result of the explosive population growth in Texas's Latino and African American communities.

40. Under the State's 2011 Plan (C185), Districts 34 and 35 were not "new" Hispanic opportunity districts, as State officials claimed.

41. District 34 as drawn in Plan C185 replaced an existing effective Hispanic opportunity district, District 27. District 34 was drawn in the State's Plan apparently because alterations to District 27 shifted control of the District from Latino voters to Anglo voters. Thus, District 34 was not a "new" Hispanic district; it was a replacement district for District 27, which was converted to an Anglo-dominated district.

42. Under Texas' 2011 plan (C185), District 35 replaced District 23, which was transformed from an effective Hispanic opportunity district to an Anglo-controlled district by including high turnout Anglo precincts into the district. The shift was effected by exchanging selected precincts in Bexar and El Paso Counties, and by extending District 23 across the Franklin Mountains into the west side of El Paso. As explained by Dr. Henry Flores at trial in *Perez v. Perry*, No. 11-cv-360 (see Trial Tr. 450:19-454:11, Sept. 7, 2011), Hispanic voter turnout was higher in areas moved out of the district than in areas that were moved in; turnout in some excluded areas was consistently over 30%, while turnout in areas that replaced them was only 25-30%). The changes were made by the State in its 2011 plan with an intent to "nudge" a district that was an ability district, but barely so, to a nonperforming district. Even Texas's expert testified in this case that CD 23 under Plan C185 "is probably less likely to perform than it was, and so I certainly wouldn't count and don't [and] haven't counted the 23rd as an effective minority district in the newly adopted plan." See Trial Testimony of Dr. John Alford (Trial Tr. 1839:2-7, Sept. 14, 2011, *Perez*, No. 11-cv-360). Thus, CD 23 was an ability to elect district in the benchmark plan (C100), but would not have been an ability to district under Plan C185.

43. Even if the State's 2011 plan (C185) had maintained the number of minority opportunity districts at eleven, doing so despite the addition of four new congressional seats in the face of the dramatic population growth constituted unlawful retrogression and dilution. Minority voters in Texas

under the pre-2011 plan (C100) were able to elect their preferred candidate of choice in 11 of the 32 districts (or 34.4%) of the districts. Even if the State of Texas had maintained all eleven of these effective minority districts in Pan C185, minorities would only have been able to elect their preferred candidate of choice in 11 of 36 districts (or 30.5%). Under the State's 2011 Plan, minority voters would only have been able to elect the candidate of choice in ten congressional districts, or 27.7% of the districts.

The State's Proposed 2011 Congressional Map (C185), Viewed Regionally

44. The State's proposed 2011 Congressional redistricting plan (C185) created egregious electoral disparities in North Texas. In the Dallas-Ft. Worth region, comprised of Dallas and Tarrant Counties, 2.1 million Hispanics and African-Americans comprise 52% of the population. The State's Plan provided these minority communities with the opportunity to elect only one candidate of their choice out of eight congressional districts in this region of the State, or 12.5% of the locality's representatives. None of the five districts that include all or part of Tarrant County provided an effective electoral opportunity for Hispanic or African-American voters. The under-representation of minority voters in the Dallas-Ft. Worth region under the state's proposed 2011 plan (C185) is stark given that the area lost 156,742 Anglos between 2000 and 2010, while gaining 600,000 Hispanics and African-Americans during that period, according to the 2010 Census. Under the State's 2011 Plan, Anglos only comprised 41.2% of the Dallas Fort Worth region but controlled 87.5% of the congressional districts in that area.

45. Under the State's proposed 2011 Congressional redistricting plan, some of the Dallas-Fort Worth area's 1.4 million Hispanics were packed into District 30 while the rest of the Hispanic population in that region was fractured among seven different congressional districts. Splits of the Hispanic population occurred between Districts 6 and 30 and in addition, other Hispanic neighborhoods were shifted into heavily Anglo Districts 5, 24, 26, 32 and 33; and African-American voters in the Dallas-Fort Worth region were fractured among Districts 33, 12, and 26. To effect this

disenfranchisement and dilution of minority voters, the State's 2011 Congressional redistricting plan twisted electoral boundaries into incoherent and bizarre configurations.

46. The State's 2011 Congressional redistricting plan (C185) did not increase the number of effective Hispanic opportunity districts in South Texas. The previous map (C100) contained six effective Hispanic opportunity districts in the South Texas-border region: 15th – Hinojosa; 16th – Reyes; 20th – Gonzales; 23rd – Canseco; 27th – Farenthold; 28th – Cuellar. Under the State's 2011 proposed Map (C185), District 27 was converted to a Coastal Bend and rural district that is controlled by Anglo voters; and District 23's Latino voting strength was diluted in much the same fashion as found unconstitutional by the Supreme Court in *LULAC v. Perry*: District 23 in Plan C185 was transformed from an effective Hispanic opportunity district to an Anglo-controlled district by including high turnout Anglo precincts into the district. District 35 in Plan C185 was purportedly created as an effective Hispanic opportunity district to offset the loss of District 23.

47. The State's 2011 Congressional redistricting plan (C185) showed utter disregard for communities of interest in the South Texas region. In San Antonio and El Paso, radically altered congressional district lines shifted the fast-growing Hispanic population into new districts. These shifts severed Latino voters from their existing elected representatives of choice and dispersed minority populations across new districts. In San Antonio, minority populations were split across Districts 20, 29, and 35. In El Paso, the minority population was split along the District 23 line.

48. The State's proposed 2011 Congressional redistricting plan (C185) also did not fairly reflect the Hispanic population growth in Harris County. Between 2000 and 2010, Harris County lost 82,000 Anglos, gained 552,000 Hispanics, and added over 134,000 African-Americans. Despite this minority population growth and Anglo population loss, the State's 2011 Congressional redistricting plan fractured the minority community and failed to afford them with any new opportunities to effectively participate in the political process. In addition to District 29, the State's Plan in the Harris

County area significantly altered other congressional district lines, splitting Hispanic communities across Districts 7, 9, and 18.

49. The State's proposed 2011 Congressional redistricting plan (C185) effected egregious district splits in Travis County also. Under the State's Plan (C185), Travis County was divided into five districts—Districts 10, 17, 21, 25, and 35—none of which contained a majority of Travis County residents. District 10 remained dominated by suburban Harris County voters under Plan C185, and included part of the African-American community in Northeast Austin. District 17 submerged a majority-minority portion of Travis County into a Waco-based congressional district. District 21 entered Travis County from the south, pulling the Capitol and University of Texas into a district controlled by suburban Bexar County. And District 25 now stretches 200 miles, capturing part of Travis County into a congressional district that stretched so far north that it included severalprecincts in Tarrant County.

50. In addition to diluting the voting strength of Travis County voters and the coalition of minority and Anglo voters who had elected their preferred candidate of choice to Congress under Plan C100 in District 25 (Rep. Doggett), the State's proposed 2011 Congressional redistricting plan (C185) also disregarded local precincts in the area. For example, Travis County Commissioner's Precinct one, which contains most of the County's African-American population, was split among four of the congressional districts under Plan C185.

51. The State's proposed 2011 Congressional redistricting plan (C185) also split all four rural counties immediately east and southeast of Austin, and split Hays County three ways.

The Court-Ordered Interim Plan (C235)

52. Because the State's proposed 2011 Congressional plan had not received Section 5 preclearance, on February 28, 2012, this three-judge Court ordered into effect an interim redistricting plan (Plan C235). In doing so, the Court stated that the interim plan was "a result of

preliminary determinations regarding the merits of the Section 2 and constitutional claims presented in this case, and application of the 'not insubstantial' standard for the Section 5 claims, as required by the Supreme Court's decision in *Perry v. Perez*." (Dkt. #681).

53. This Court's March 19, 2012 Memorandum Opinion (Dkt. #691) made clear that the court-ordered interim plan was not a final ruling and the plan was imposed on a preliminary basis. The Court stated:

> "Both the § 2 and Fourteenth Amendment claims presented in this case involve difficult and unsettled legal issues as well as numerous factual disputes. It is especially difficult to determine whether a claim has a likelihood of success when the law is unsettled, as many areas of § 2 law are. Further, both the trial of these complex issues and the Court's analysis have been necessarily expedited and curtailed, rendering such a standard even more difficult to apply. The Court has attempted to apply the standards set forth in *Perry v. Perez*, but emphasizes that it has been able to make only preliminary conclusions that may be revised upon full analysis."

(Dkt. #691 at 1-2).

54. The court-approved interim plan (C235) was "a compromise plan" originally offered to the Court as Plan C226 by the Latino Redistricting Task Force plaintiffs, and the Canseco and Cuellar Intervenors. The State of Texas consented to this Court's adoption of that Plan. This Court made technical corrections to Plan C226, noting that the Texas Legislative Council had identified "what appear to be inadvertent intrusions of congressional districts into six different counties. These intrusions consist of either one or at most several census blocks and all contain either no people or very few people." (Dkt. #691 at 29-30).

55. The interim plan (Plan C235) was implemented in the 2012 elections. Those election results can be used to assess the interim plan and, along with other evidence, inform this Court's decision with respect to whether the interim plan meets the requirements of federal law (Section 2 of the Voting Rights Act) and the United States Constitution.

The Texas Legislature's Redistricting Process Used in the 2013 Special Session Was Infected With Intentional Discrimination

56. On May 27, 2013, Governor Perry announced a special session in which the legislature would consider adopting and enacted the Court's interim plans. The Governor's call limited the special session to adoption of the interim plans "as is" and thus did not contemplate amendments or changes to the interim plans that would address constitutional or statutory flaws in the interim plans.

57. The Legislature followed the Governor's instructions precisely, not allowing a single change of any type in the interim congressional plan. Numerous alternative plans repair all or some of the violations in the interim plan and were brought to the attention of the Texas Legislature in the special session. Each one of these alternatives – even those calling for very minor technical changes – was rejected. Moreover, at field hearings held by the Legislature, hundreds of Texas citizens testified *against* adoption of the interim plan and made specific requests for changes that would have repaired flaws and violations in those plans. The testimony of all witnesses calling for changes – large or small – was rejected without serious consideration or deliberation, demonstrating that those hearings were a sham.

58. During the special session, advocacy groups and elected officials representing minority communities pointed out to the Texas Legislative leaders the statutory and constitutional flaws still present in Plan C235, and urged that these flaws be corrected.

59. On June 1, the Texas legislature enacted Plan C235, the interim Congressional plan, without change. The enacted plan failed to correct the Voting Rights Act and constitutional flaws in the plan.

60. The Texas Legislature's failure to create a new Latino opportunity district in the Dallas-Fort Worth region is a remnant and perpetuation of the state's intent to discriminate

against and dilute the voting strength of Latino voters that persists in the 2013 enacted Congressional plan.

61. The Texas Legislature's failure to remedy the intentional cracking of a cohesive community of color in the congressional plan in the Austin area is a remnant and perpetuation of the state's intent to discriminate against voters of color that persists in the 2013 enacted Congressional plan.

62. The Texas Legislature's failure to remedy the intentional carving apart of CD 30, including removal of economic engines and historically active communities important to voters in the district, is a remnant and perpetuation of the state's intent to discriminate against voters of color that persists in the 2013 enacted Congressional plan.

63. The redistricting process used in the special session to adopt Plan C235 was infected with intentional discrimination against racial and language minority persons.

The State's Proposed 2013 Map (C235), Viewed Statewide

64. Under interim Plan C235, minority voters elected their candidate of choice in 12 districts. In eight of these districts Latino voters elected their candidate of choice: District 15 - Hinojosa, District 16 - O'Rourke, District 20 - Castro, District 23 - Gallego, District 28 - Cuellar, District 29 - G. Green, District 3 - Vela and District 35 - Doggett. In four of these districts, African-American voters elected their candidate of choice: District 9 - A. Green, District 18 - Jackson Lee, District 30 - E. B. Johnson and District 33 - Veasey. There are no other districts under Plan C235 where minority voters can reasonably be expected to elect their candidate of choice to Congress throughout the remainder of the decade.

65. Anglos make up only 45.3 percent of total Texas population and 49.5 percent of the state's voting age population, yet under Plan C235 Anglos easily control 24 out of 36 (over 66 percent) of the state's congressional districts.

66. Latino and African American population growth in Texas over the previous decade accounted for 90 percent of the new Texas population and was responsible for all four of the new Texas districts being added through allocation. African-Americans make up 11.5 percent of state's voting age population and are sufficiently concentrated and vote cohesively, thereby justifying the retention of four districts (11.1 percent of districts) controlled by African-American voters. Latinos make up 33.6 percent of the state's voting age population and 25.5 percent of the state's citizen voting age population. The eight Latino ability to elect districts under Plan C235 make up only 22.2 percent of the 36-seat delegation. To fairly reflect the state's Latino population growth and the Latino population, at least one additional effective Latino district should be configured. Alternative plans submitted by the Quesada plaintiffs as well by other plaintiffs demonstrate that Texas congressional districts within Plan C235 can be reconfigured to include: four African-American 'ability to elect' districts; nine Latino 'ability to elect' districts; and a Travis County-based cross-over district similar to CD25 in benchmark plan C100.

The State's Proposed 2013 Map (C235), Viewed Regionally

Congressional District 33 In The Interim Plan

67. 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.

69. 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.

Fracturing of Nueces County and Congressional District 27 In The 2013 Plan

70. For example, nearly 200,000 Hispanics in Nueces County remain stranded in an Anglo-dominated district, whereas they previously (*i.e.*, pre-2011) were within an effective

ability to elect Hispanic district (CD 27) under the benchmark plan (C100). Although Texas replaced CD 27 with CD 34, it exiled the large politically cohesive Hispanic population in Nueces County into districts where they no longer have an effective ability to elect their preferred candidate. The overall effect of this intentional fracturing of the Hispanic population in Nueces County is perpetuated in the court-ordered interim plan and is one reason that the interim plan does not overall fairly reflect Hispanic voting strength in the state.

Congressional District 23 In The State's 2013 Plan

71. As this Court correctly observed in its Memorandum Opinion when it imposed Plan C235, the Plaintiffs' claims that the State of Texas reduced minority voting strength in Congressional District 23 were not insubstantial. Accordingly, this Court altered District 23 in the interim map. To be sure, District 23 in the State's 2013 interim plan (C235) improved the opportunity for Hispanic voters than existed under the State's proposed plan (C185). But the interim plan did not restore District 23 to the same level of Hispanic voting strength as existed in the benchmark plan (C100). While this Court concluded that Congressional District 23 in the interim plan "has been sufficiently restored to benchmark level," it observed that "the margin of victory has slightly decreased." (Dkt. #691 at 32). Moreover, this Court observed that Texas' own analysis of Congressional District 23 in Plan C235 showed that election performance for Hispanics has been restored to the benchmark level "in 3 out of 10 racially contested exogenous general elections." Thus, in 7 of 10 exogenous general elections, Hispanic voting strength had not been restored to benchmark levels in CD 23. Furthermore, the voters in Congressional District 23 under the benchmark map (C100) were the victims of intentional discrimination and the full remedy for that discrimination is to put them back into the district that would have existed but for the State's discrimination, and the 2013 plan (C285) does not do that.

72. This Court did not decide the intent claims and expressly noted that its interim plan did not address these claims with respect to District 23 or other districts. Because Congressional District 23 was purposefully diluted by the State in 2011 and the interim plan only partially restores and fails to fully remedy that intentional discrimination and dilution, Congressional District 23 as drawn in the 2013 plan should be changed to restore Hispanic voting strength and cure Texas' purposeful discrimination against Hispanic voters.

Congressional District 25 In The State's 2013 Plan

73. In Travis County, the State of Texas purposefully dismantled crossover District 25 in its 2011 plan (C185). Plan C185 contained egregious district splits in Travis County. Under the State's Plan, Travis County is divided into five districts—Districts 10, 17, 21, 25, and 35—none of which contains a majority of Travis County residents. Minority voters were treated like 'spare parts', and many were stranded in districts controlled by Anglo voters, thereby diluting the voting strength of Travis County voters and the coalition of minority and Anglo voters who had elected their preferred candidate of choice to Congress (Rep. Doggett). The interim plan perpetuates this fracturing and fails to remedy the purposeful destruction of CD 25. While the interim plan does contain a new majority Hispanic district that runs from Travis County to Bexar County, alternative configurations and plans are available which restore the coalition of minority and Anglo voters in Travis County and create a new Hispanic opportunity district in the I-35 corridor south and east of Austin down to San Antonio.

Count 1

74. Plaintiffs re-allege the facts set forth in paragraphs 1 through 73, above.

75. The 2011 Congressional redistricting plan violates Section 2 of the Voting Rights Act, as amended, 42 U.S.C. § 1973. That plan results in a denial or abridgement of the right to vote of individual plaintiffs on account of their race, color, or ethnicity, by having the effect of

canceling out or minimizing their individual voting strength as minorities in Texas. The Congressional redistricting plan passed by the Texas Legislature in 2011 did not afford individual plaintiffs an equal opportunity to participate effectively in the political process and to elect representatives of their choice, and denies individual plaintiffs the right to vote in elections without discrimination of race, color, or previous condition of servitude in violation of 42 U.S.C. § 1973.

Count 2

76. Plaintiffs re-allege the facts set forth in paragraphs 1 through 73, above.

77. The interim plan (C235) violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, in that, under the totality of the circumstances, Plaintiffs and minority voters are denied an equal opportunity to participate effectively in the political process and to elect candidates of their choice to the U.S. House of Representatives. The State's Congressional Plan also violates Section 2 of the Voting Rights Act, 42 U.S.C. §1973, because it fails to cure features of Texas' enacted plan (C185) that intentionally discriminated against minority voters.

Count 3

78. Plaintiffs re-allege the facts set forth in paragraphs 1 through 73, above.

79. The 2011 Congressional redistricting plan adopted by the Texas Legislature was developed in such a way and with the intent to disadvantage African-American and other minority voters, including Plaintiffs herein. That intentional discrimination is a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, the Fifteenth Amendment of the United States Constitution, and 42 U.S.C. § 1983.

Count 4

80. Plaintiffs re-allege the facts set forth in paragraphs 1 through 73, above.

81. The interim plan (C235) violates the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment to the United States Constitution because it perpetuates the intentional fracturing of politically cohesive minority voters and the intentional dilution of minority voting strength that characterized the state's 2011 enacted plan (C185). Plan C235 discriminates against African-American and Hispanic persons by denying Plaintiffs and minority voters an equal opportunity to participate in the political process and to elect candidates of their choice to the U.S. House of Representatives.

Count 5

82. Plaintiffs re-allege the facts set forth in paragraphs 1 through 73, above.

83. The interim plan (C235) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because the State of Texas has adopted a plan that intentionally allows Anglo voters to dominate certain districts, but rejects the creation of districts in which black or Latino voters would dominate districts unless those districts cross a numerical population threshold of 50%. In some instances, for example, the State of Texas has regarded a minority district as protected under the Voting Rights Act even if none of the racial or language minority groups within it does not cross the 50% threshold, while at the same time rejecting the creation of additional black or Latino districts because they do not exceed the 50% population threshold. This differential treatment of voters violates the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment to the United States Constitution.

V. Prayers for Relief

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Maintain jurisdiction over this action;

2. Issue a declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure Rule 57, declaring that both the 2011 Congressional redistricting plan and the State of Texas' adoption of the congressional plan in 2013 (C235) was undertaken with an intent to discriminate against racial and language minorities in violation of Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, and in violation of the Equal Protection Clause of the Fourteenth and Fifteenth Amendment;

3. Issue a declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure Rule 57, declaring that the congressional redistricting plans adopted by the Texas Legislature in 2011 and in the special session in June 2013 dilute the voting strength of minority voters in violation of Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, and in violation of the Equal Protection Clause of the Fourteenth and Fifteenth Amendment;

4. Issue preliminary and permanent injunctions enjoining the Defendants, their agents, employees, and those persons acting in concert with them, from enforcing or giving any effect to the proposed congressional district boundaries as enacted by the Texas Legislature in 2011 and 2013, including enjoining Defendants from conducting any future elections for the U.S. House of Representatives based on the state's 2013 congressional redistricting Plan;

5. Grant relief pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. § 1973a(c) based on findings that State of Texas continues to engage in acts of intentional voting discrimination, including the State of Texas's adoption in 2011 and 2013 of Congressional redistricting;

6. Retain jurisdiction for such period as it may deem appropriate and during such period require that Defendants and the State of Texas not enforce any voting qualification or prerequisite to voting or standard, practice, or procedure with respect to voting different from that in force or effect at the time this proceeding was commenced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title;

6. Make all further orders as are just, necessary, and proper to ensure complete fulfillment of this Court's declaratory and injunctive orders in this case;

7. Issue an order requiring Defendants to pay Plaintiffs' costs, expenses and reasonable attorneys' fees incurred in the prosecution of this action, as authorized by the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U.S.C. § 1988 and 42 U.S.C. 1973-1(e); and

8. Grant such other and further relief as it deems proper and just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of September, 2013, I served a copy of the foregoing QUESADA PLAINTIFFS' THIRD AMENDED COMPLAINT on counsel who are registered to receive NEFs through the CM/ECF system. All attorneys who have not yet registered to receive NEFs have been served via first-class mail, postage prepaid.

/s/ J. Gerald Hebert
J. GERALD HEBERT