

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

SHANNON PEREZ, ET AL.,
Plaintiffs

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VS.

Civil Action No. 11-CV-360-OLG-JES-XR
[Lead Case]

STATE OF TEXAS, ET AL.,
Defendants.

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MEXICAN AMERICAN
LEGISLATIVE CAUCUS, (MALC)
Plaintiff,

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VS.

Civil Action No. 11-CV-361 OLG-JES-XR
[Consolidated Case]

STATE OF TEXAS, ET AL.,
Defendants.

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TEXAS LATINO REDISTRICTING
TASK FORCE, ET AL.,
Plaintiffs,

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VS.

Civil Action No. 11-CV-490-OLG-JES-XR
[Consolidated Case]

RICK PERRY,
Defendant.

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MARGARITA V. QUESADA, ET AL.,
Plaintiffs,

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VS.

Civil Action No. 11-CV-592-OLG-JES-XR
[Consolidated Case]

RICK PERRY, ET AL.,
Defendants.

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I.
Introduction

1. The State's 2011 plans to redistrict the Texas House of Representatives and the Texas Delegation to the United States House of Representatives are blatant partisan gerrymanders that are designed to ensure that Republicans continue to control the Texas Congressional Delegation and the Texas House of Representatives to a much farther degree than the voting population would support. Because the maps adopted in 2013 keep intact much of the 2011 maps, those plans are equal partisan gerrymanders. The fact these maps were designed with strict partisan purposes is not in dispute and has been conceded by almost every, if not every, officer involved in the drawing of the plans. The 2013 plans include a number of congressional and house districts that far exceed Republican's share of the State's electorate. The evidence demonstrates that the Defendants improperly used race in drawing its maps and for the reasons stated by other Plaintiffs, these maps violate federal anti-discrimination laws. That said, to the degree the Court determines that voters who align with the Democratic Party were targeted, in addition to or instead of racial targeting, the plans remain unlawful under now existing federal law. The State, in redistricting or otherwise, cannot lawfully target voters simply because those voters support a particular Party or ideology.

II.
Jurisdiction and Venue

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1357, and 2284; and pursuant to 42 U.S.C. §§ 1983 and 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

3. Cross-Claimant, the Texas Democratic Party, is one of the two major political parties in Texas and is formed under provisions of the Texas Election Code. It may be served through its counsel herein. It brings suit on behalf of itself and its thousands of members statewide.

4. Cross-Claimant, Gilberto Hinojosa, is the duly elected Chairman of the Texas Democratic Party and the State Democratic Executive Committee, as recognized under Texas election laws. Cross-Claimant Hinojosa is a registered and participating voter in Cameron County, Texas and may be served through counsel herein.

5. Cross-Defendant, RICK PERRY, is the Governor of the State of Texas and Chief Executive Officer of the State of Texas. Cross-Defendant PERRY is sued in his official capacity.

6. Cross-Defendant, JOHN STEEN, is Texas Secretary of State. Cross-Defendant STEEN is sued in his official capacity. Cross-Defendant STEEN is responsible for administering and supervising the elections of United States Representatives from the State of Texas. Cross-Defendant STEEN is responsible for administering and supervising the elections of the Texas House of Representatives.

IV. Facts

7. In 2011, the Texas Legislature adopted redistricting plans for the Texas House of Representatives and for the United States House of Representatives.

8. Pursuant to §5 of the Voting Rights Act, the State of Texas submitted these plans to the United States Department of Justice and the United States District Court for the District of Columbia (DC Court) for preclearance.

9. After trial, the DC Court denied preclearance and objected to the plans for multiple reasons.

10. Before the DC Court could rule on preclearance, this Court enjoined these plans relying at least in part of the mandatory injunction provisions under Section 5.

11. In order for elections to timely occur, this Court drew its own plans, a Supreme Court appeal ensued, and then this Court drew additional new plans.

12. The Court drawn plans were used in the 2012 election and then were recently adopted, with some modification by the Texas Legislature resulting in what is termed here as the 2013 plans.

13. Due to the requirements of the ruling by the Supreme Court in the appeal of this case, the new plans that went into effect by order of this Court, and then adopted by the Legislature, included the vast majority of the characteristics of the original plans adopted by the Legislature in 2011.

14. TDP had originally sued in this Court objecting to the 2011 plans under Section 5 and also claiming the plans were unconstitutional gerrymanders. *See* Dkt. # 55.

15. This Court dismissed the political gerrymander claims (Dkt. # 285) and TDP filed a Motion to Reconsider (Dkt. # 384) in order to alleviate the need for an immediate Supreme Court appeal. The Court has now ruled the 2011 partisan gerrymander claims are dismissed but has granted TDP leave to file a political gerrymander claim against the 2013 plans (Dkt. # 886).

16. As the Court is aware from earlier briefing, five justices on the Supreme Court have supported the theory of a political gerrymander claim only to avoid granting such relief under such claims due to the concern that an unworkable standard for such claims does not exist.

17. Here, TDP claims a standard is unnecessary given the factual admission by the State officers that their plan was drawn with unreserved political motivation. Furthermore, given that the trial evidence demonstrates population deviation was utilized in the State House map as the principal method to obtain the sought political ends, TDP urges this case presents a meaningful standard (*e.g.*, *Cox v. Larios*, 124 S.Ct. 2806 (2004)) to allow a political gerrymander claim.

18. TDP intends to show that evidence proves the 2013 plans adopted are, in addition to being racially discriminatory, are illegal political gerrymanders, and therefore should not, in accordance with the law, take effect.

19. Allowing the plans to take effect would significantly harm the First Amendment speech and associational rights of Cross-Claimants.

20. The plans, as adopted, fail to provide fair and reasonable districts in proportion to the members of Cross-Claimants' political association.

V.
Claims

Count
1
Equal Protection

24. Plaintiffs re-allege the facts set forth in the paragraphs above.

25. The partisan classifications in the 2013 Plans were applied in an invidious manner and in a way unrelated to any legitimate legislative objective. The 2013 Plans are intentional partisan gerrymanders that thwart majority rule and are an affront to basic democratic values in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; Article I, Sections 2 and 4, of the United States Constitution and the First Amendment to the United States Constitution. The Legislature's actions in adopting the plans in 2013 were themselves illegal partisan decisions. Indeed, the evidence demonstrates that the plans were crafted to give particular and distinct benefit to one classification of voters over another.

Count

2

First Amendment

26. Plaintiffs re-allege the facts set forth in the paragraphs above.

27 The 2013 Plans are invidious to the First Amendment Speech and Associational Rights of Plaintiffs. TDP, its Chairman, and the citizens members of the TDP may not be lawfully targeted by the government simply because of their partisan and political beliefs. TDP, its Chairman, and the citizens members of the TDP may not constitutionally suffer from the dilution of their vote due to a violation of the First Amendment. TDP, its Chairman, and the citizens members of the TDP suffer unique harm when the state adopts redistricting plans for the purpose of preventing the effective vote of a class of persons, in this case people who align with and are members of the Democratic Party.

VI.

Prayer for Relief

WHEREFORE, Cross-Claimants respectfully pray that this Court:

1. Issue a declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure Rule 57, declaring that the 2013 Plans for redistricting of the Texas House of Representatives and the Texas Delegation to the United States House of Representatives are unconstitutional political gerrymanders in violation of the First and Fourteenth Amendments to the

United States Constitution and Article I of the United States Constitution;
and cannot be administered.

2. Issue preliminary and permanent injunctions enjoining the Cross-Defendants, their agents, employees, and those persons acting in concert with them, from enforcing or giving any effect to the proposed district boundaries, including enjoining Cross-Defendants from conducting any elections based on the 2013 Plans.
3. 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.
4. 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.

Grant such other and further relief as it seems is proper and just.

Dated this 18th day of September, 2013.

Respectfully submitted,

By: /s/ Chad W. Dunn
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ATTORNEY FOR TEXAS
DEMOCRATIC PARTY AND
GILBERTO HINOJOSA, IN HIS
CAPACITY AS CHAIR OF THE
TEXAS DEMOCRATIC PARTY

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2013, I electronically filed the foregoing document(s) with the Clerk of the United States District Court, Western District of Texas, San Antonio Division, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Chad W. Dunn
Chad W. Dunn