

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

SHANNON PEREZ, <i>et al.</i> ,	)	
	)	
<i>Plaintiffs</i> ,	)	CIVIL ACTION NO.
	)	SA-11-CA-360-OLG-JES-XR
v.	)	[Lead case]
	)	
STATE OF TEXAS, <i>et al.</i> ,	)	
	)	
<i>Defendants</i> .	)	
_____	)	
	)	
MEXICAN AMERICAN LEGISLATIVE	)	CIVIL ACTION NO.
CAUCUS, TEXAS HOUSE OF	)	SA-11-CA-361-OLG-JES-XR
REPRESENTATIVES (MALC),	)	[Consolidated case]
	)	
<i>Plaintiffs</i> ,	)	
v.	)	
	)	
STATE OF TEXAS, <i>et al.</i> ,	)	
	)	
<i>Defendants</i> .	)	
_____	)	
	)	
TEXAS LATINO REDISTRICTING TASK	)	CIVIL ACTION NO.
FORCE, <i>et al.</i> ,	)	SA-11-CV-490-OLG-JES-XR
	)	[Consolidated case]
<i>Plaintiffs</i> ,	)	
v.	)	
	)	
RICK PERRY ,	)	
	)	
<i>Defendant</i> .	)	
_____	)	
	)	
MARAGARITA V. QUESADA, <i>et al.</i> ,	)	CIVIL ACTION NO.
	)	SA-11-CA-592-OLG-JES-XR
<i>Plaintiffs</i> ,	)	[Consolidated case]
v.	)	
	)	
RICK PERRY, <i>et al.</i> ,	)	

<i>Defendants.</i>	)	
_____	)	
JOHN T. MORRIS,	)	CIVIL ACTION NO.
<i>Plaintiff,</i>	)	SA-11-CA-615-OLG-JES-XR
	)	[Consolidated case]
v.	)	
STATE OF TEXAS, et al.,	)	
<i>Defendants.</i>	)	
_____	)	
EDDIE RODRIGUEZ, et al.	)	CIVIL ACTION NO.
<i>Plaintiffs,</i>	)	SA-11-CA-635-OLG-JES-XR
	)	[Consolidated case]
v.	)	
RICK PERRY, et al.,	)	
<i>Defendants.</i>	)	

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**THIRD AMENDED COMPLAINT OF PLAINTIFF-INTERVENORS TEXAS STATE  
CONFERENCE OF NAACP BRANCHES, *ET AL.***

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1. This is an action to enforce NAACP Plaintiff-Intervenors’ rights under the Fourteenth Amendment and Fifteenth Amendment to the United States Constitution and under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973 et seq. NAACP Plaintiff-Intervenors, an association and individual registered voters, bring this action requesting declaratory and injunctive relief against the State of Texas to challenge both the 2011 redistricting plans for the Texas Congressional districts and the Texas State House districts and the 2013 plans for the same bodies. Both of the 2011 and 2013 redistricting plans dilute the voting strength of African-American and Latino voters because, under the totality of circumstances, African-American and

Latino voters do not have an equal opportunity to elect candidates of their choice to the United States Congress or the Texas House of Representatives. The 2011 redistricting plans were also heavily infected with an intent to discriminate, on the basis of race and ethnicity, against African-American and Latino voters, in violation of both the Voting Rights Act and the Fourteenth Amendment to the United States Constitution. The 2013-enacted plans retain many of the constitutional violations that were present in the 2011 redistricting plans. Although Texas appears to no longer desire to implement the 2011 plans, without a ruling from this Court on the 2011 plans, Texas would be free to continue its racially-discriminatory behavior in the future. Furthermore, absent corrective action from this Court, the 2013 redistricting plans will continue to dilute the voting strength of Texas' African American and Latino citizens and deny them fair representation in these governing bodies. NAACP Plaintiff-Intervenors seek the implementation of Congressional and State House redistricting plans that will not dilute the voting strength of African-American voters in Texas. NAACP Plaintiff-Intervenors also seek costs and attorneys' fees.

## **I. JURISDICTION**

2. 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 42 U.S.C. § 1988.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

4. Plaintiff-Intervenors seek declaratory and injunctive relief pursuant to 28 U.S.C. § 2201 and 2202.

## **II. PARTIES**

5. Plaintiff the Texas State Conference of NAACP Branches is an association of local chapters of the NAACP. It shares the mission of the national NAACP: to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination. The Texas State Conference has previously participated in redistricting litigation in state and federal courts at all levels.

6. Plaintiff Howard Jefferson resides at 4402 Nenana Drive, Houston TX, 77035. A resident of Harris County, he is a member of the Texas State Conference of NAACP Branches and is a registered voter. He lived in State House District 146 in the 2001 state house redistricting plan, in State House District 146 in the 2011 plan, in State House District 146 in the court-ordered interim house plan in use for the 2012 elections, and remains in State House District 146 in the Texas' newly enacted state house redistricting plan.

7. Plaintiff Juanita Wallace resides at 1409 S. Lamar Street, Loft 341, Dallas TX, 75215. A resident of Dallas County, she is the President of the Dallas Branch of the NAACP and is a registered voter. She lives in current Congressional District 30. She lived in State House District 100 in the 2001 state house redistricting plan, in State House District 100 in the 2011 plan, in State House District 100 in the court-ordered interim house plan in use for the 2012 elections, and remains in State House District 100 in the Texas' newly enacted state house redistricting plan.

8. Plaintiff Rev. Bill Lawson resides at 4042 Glen Code Drive, Houston TX, 77021. A resident of Harris County, he is a member of the NAACP and a registered voter. He is Pastor Emeritus of Wheeler Avenue Baptist Church, and both a long-time civil rights leader and an advocate for the indigent and homeless in Houston. He lives in current Congressional District 18. He lived in State House District 146 in the 2001 state house redistricting plan, in State

House District 147 in the 2011 plan, in State House District 147 in the court-ordered interim state house plan in use for the 2012 elections, and remains in State House District 147 in the Texas' newly enacted state house redistricting plan.

9. Defendant 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.

10. 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.

11. Defendant David Dewhurst is duly elected and acting Lieutenant Governor of Texas. Under Article IV, Section 16, of the Texas Constitution he is the President of the Texas Senate. He is sued in his official capacity.

12. Defendant Joe Strauss is the duly elected and acting Speaker of the Texas House of Representatives and is the presiding officer over the Texas House of Representatives. He is sued in his official capacity.

13. Defendant Hope Andrade is the duly appointed and acting Secretary State of the State of Texas. She is sued in her official capacity.

### **III. FACTS**

14. The Texas State Conference of NAACP Branches is a non-profit, non-partisan membership organization and has previously been involved in redistricting cases at all levels. The State Conference, its branches and its members have also presented testimony to legislative bodies on various state and local election schemes and/or redistricting plans

15. Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973, applies nationwide and prohibits voting practices and procedures that result in the denial or abridgement of the right of any citizen to vote on account of race, color, or membership in a language minority group. Section 2 is a permanent provision of the federal Voting Rights Act.

16. After the last decennial census, the Texas Congressional apportionment increased from 32 representatives to 36 representatives, due to an overall population increase of 20.6% (more than twice the average rate of growth nationally). Approximately 89% of the population growth in Texas in the past decade—growth that resulted in our State's right to 4 additional Congressional representatives—is a result of minority population growth. Both Latino and African-American growth eclipsed Anglo growth in both percentage and raw numbers—Latino growth represented 65% of the state's population growth, the African-American population grew 22%, and the Anglo population grew just 4.2%. Texas is now a majority-minority state—only 45% of the state's total population is Anglo.

17. Proportionally, voters of color in Texas are underrepresented in the U.S. House of Representatives, in both the 2011 and the 2013 plans.

18. During the 2011 redistricting process, the Texas State Conference of NAACP Branches submitted to the Texas Legislature a plan that created a new African-American opportunity seat and a new Latino opportunity seat in the Dallas-Fort Worth area, but the request to create this district was denied. The population growth in the Dallas-Fort Worth area amply justified the creation of two new Congressional minority opportunity districts in the region. The 2011 plan did not create any additional minority opportunity districts in the region. The 2013 plan, while incorporating the court-added African-American opportunity district, Congressional District 33, still deprives Latino voters of an opportunity to elect the candidate of their choice in

an additional district in the region. As it is, there are no Latino members of Congress representing the Dallas-Fort Worth Metroplex.

19. As drawn in the congressional plan passed by the Texas Legislature, congressional districts in Harris, Fort Bend, Dallas, Tarrant, Travis, Bexar, Hays and Comal Counties all dilute the voting strength of African-American and Latino voters.

20. In the congressional plan passed by the Texas Legislature in 2011, Congressional Districts 9, 18 and 30 were drawn in a way that undermines the ability of African-Americans to effectively participate in the political process in those areas, and intentionally discriminates against voters in those districts. The congressional plan has similar impact on Latinos in those districts who have acted in coalition with African-Americans to further the interests of both communities. The 2013 congressional plan still does not correct all of the detrimental and purposefully discriminatory changes to Congressional District 30—including removal of important economic engines and historical communities—that were present in the 2011 plan.

21. The 2011 Congressional plans unnecessarily split communities of interest, removed important economic engines from the existing Congressional African-American and Latino districts, and were purposefully designed to undermine or frustrate effective and long term voter coalitions in the area.

22. African Americans and Latinos are currently underrepresented in the Texas House of Representatives. In the 2011 redistricting process, the Texas Legislative Black Caucus tendered to the state legislature a plan that provided 4 additional African-American opportunity districts in the Texas House of Representatives. The new districts created by the Legislative Black Caucus were State House District 26 in Fort Bend and Harris County, State House District

54 in Bell County, State House District 107 in Dallas County, and State House District 114 in Tarrant County.

23. The result of the plans passed by the Texas Legislature in 2011 was that one major political party is the party of minorities and the other major political party is a party of whites.

24. Elections in Texas continue to be racially polarized.

25. African-Americans in Texas generally vote as a group and are politically cohesive.

26. Latinos in Texas vote as a group and are politically cohesive.

27. Latinos and African-Americans in Texas vote as a group and are politically cohesive. Latinos and African-Americans in Congressional District 30, Congressional District 9 and Congressional District 18 vote as a group and are politically cohesive in ensuring the continued character of the districts. Latinos and African-Americans in Tarrant County vote as a group and are politically cohesive. Latinos and African-Americans in Travis, Hays and Bastrop counties vote as a group and are politically cohesive.

28. Anglos in Texas generally vote as a 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 by federal and state courts, the United States Commission on Civil Rights and by the United States Congress.

29. The House Committee on Redistricting held a public hearing on June 2, 2011, and the Senate Select Committee on Redistricting held a public hearing on June 3, 2011, both on the state's proposed Congressional redistricting plan. During the approximately 7 hours of testimony for each meeting, every single person except one testified against the proposed



Congressional plan. The Texas Legislature passed it despite this opposition and concern for minority voting rights.

30. During the 2011 legislative process, the Texas Legislature had before it plans for the Congressional, State House and State Senate districts that did not dilute the voting strength of African-American and Latino voters, and the legislature rejected those plans for plans that did not afford minority voters an equal opportunity to elect candidates of their choice.

31. Numerous plaintiff groups filed suit in the summer of 2011, challenging the 2011 enacted Congressional, State House, and State Senate plans as violating the Equal Protection Clause of the 14<sup>th</sup> Amendment and Section 2 of the Voting Rights Act.

32. Because Texas was, during 2011, a covered jurisdiction under Section 5 of the Voting Rights Act of 1965, it was required to obtain federal preclearance before implementing its enacted redistricting plans. Because the state failed to do so in a timely fashion, this three-judge panel in the United States District Court for the Western District of Texas was forced to craft an interim plan to govern the 2012 elections.

33. This Court ordered into effect Congressional Plan C235 and State House Plan H309 on February 28, 2012, based on “preliminary determinations regarding the merits of the Section 2 and constitutional claims presented in this case.” (Doc. No. 681). The Court noted, however, that its “preliminary conclusions” “may be revised upon full analysis.” (Doc. No. 681).

34. Moreover, following the United States Supreme Court ruling in *Perry v. Perez*, this Court was instructed to pay significant deference to the state’s 2011 enacted plans—plans that were deeply infected by an intent to discriminate against and dilute the voting strength of the state’s exploding minority population.

35. Months after this Court had issued its order on the interim plans to govern the 2012 elections, a three-judge panel in the United States District Court for the District of Columbia ruled in the Section 5 case before it, where the State of Texas sought preclearance for its 2011 enacted redistricting plans.

36. The D.C. Court made substantial findings regarding the intentional discrimination that infected the process by which the state drew its 2011 redistricting plans, and the discriminatory effect that resulted in the Congressional and State House plans.

37. With regards to the Congressional plan, the D.C. Court noted that the Department of Justice and Intervenors (many of whom are Plaintiffs in the instant action) presented more evidence of intentional discrimination than the court had room to discuss. *Texas v. United States*, 887 F. Supp. 2d 133, 162 n. 32 (D.D.C. 2012). Specifically, the Court found that the way in which the State had carved apart the Congressional districts being represented by African-American members of Congress could be explained only by an intent to discriminate against minority voters in the districts. *Id.* at 160-61.

38. The D.C. Court also cited the failure to draw a new Latino opportunity district in the Dallas-Fort Worth area as evidence of the Texas legislature's deep-seated intent to dilute the voting strength of Latino voters. *Id.* at 162, n. 32.

39. The D.C. Court found that the State House plan would have a demonstrably negative effect on the ability of minority voters to elect the candidates of their choice, so it did not formally address allegations of intentional discrimination in the State House plan. *Id.* at 177. It did, however, note that ample evidence existed and was presented to the court that would support a conclusion that discriminatory intent likewise drove the drawing and enactment of the State House plan. *Id.* at 178.

40. The election results in 2012, in elections under this Court's ordered interim plans, demonstrate that not every statutory and constitutional flaw identified in the 2011 redistricting plans was corrected.

41. While the interim plan did make improvements, including the construction of Congressional District 33 in the Dallas-Fort Worth area, minority voters in that area still have not had the vote dilution they have suffered, nor the harm caused by being subject to unconstitutional intentional discrimination, fully remedied.

42. As urged by the NAACP from the inception of this litigation, the minority population growth in the Dallas-Fort Worth Metroplex was more than sufficient to support an additional, reasonably-compact district in which African-American voters would have an opportunity to elect the candidate of their choice. In the 2012 elections, African-American voters in the region were able to elect their candidate of choice in two districts—CD 30 and new CD 33. African-American Congressman Marc Veasey, elected from CD 33 in 2012, received the overwhelming support of black and Latino voters in his November election.

43. There is sufficient Latino population in the Dallas-Fort Worth metroplex to construct a reasonably-compact district in which Latino voters have an opportunity to elect their candidate of choice. This district can be drawn while still maintaining the ability of black voters to elect their candidates of choice in CD 30 and CD 33.

44. The Court-ordered interim plan also did not correct all of the damage done to CD 30 by the Texas legislature in 2011.

45. The Court-ordered interim plan did not reunite the intentionally-cracked African-American and Latino voters in historic East Austin—voters in former CD 25.

46. The interim plan ordered into place for elections to the Texas House of Representatives, like the Congressional interim plan, made some important corrections to statutory and constitutional violations in the 2011 enacted plans, but does not fully remedy those flaws.

47. H309 did remedy the intentional destruction of HD 149, a coalition district in Harris County in which Asian-Americans, African-Americans and Latinos voted cohesively to elect their candidate of choice.

48. H309 did not create any new districts in which African-American voters would have an opportunity to elect their candidate of choice.

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

50. During the special session, advocacy groups and elected officials representing minority communities pointed out the statutory and constitutional flaws still present in the Court's interim plan, and urged that these flaws needed to be corrected.

51. On June 1 and 3, the legislature enacted the C235, the interim Congressional plan, without change, and it enacted H309, the interim House plan (then H358), with only minor changes, none of which corrected the Voting Rights Act and constitutional flaws in the plan.

52. The challenges brought by the NAACP to the 2011 Congressional and State House Plans are not moot because, absent a ruling from this Court, Texas is free to continue its

racially discriminatory redistricting practices. Moreover, many of the intentionally discriminatory elements in the 2011 plans are still present in the 2013 plans.

53. The 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.

54. The 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.

55. The 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.

56. The failure to create any new African-American opportunity districts is a remnant and perpetuation of the state's intent to discriminate against and dilute the voting strength of African-American voters that persists in the 2013 enacted State House plan.

## **CAUSES OF ACTION**

### **Count I**

57. The allegations contained in paragraphs 1-56 are alleged as if fully set forth herein.

58. The 2011 Congressional and State House redistricting plans violated Section 2 of the Voting Rights Act, as amended, 42 U.S. § 1973. Those plans result in a denial or abridgement of the right to vote of individual plaintiffs and organizational plaintiff's members 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 redistricting plans passed by the Texas Legislature in 2011 did not afford individual plaintiffs and organizational plaintiff's members an equal opportunity to participate in the political process and to elect representatives of their choice, and deny individual plaintiffs and organizational plaintiff's members 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 II**

59. The allegations contained in paragraphs 1-58 are alleged as if fully set forth herein.

60. The 2013 Congressional and State House redistricting plans violate Section 2 of the Voting Rights Act, as amended, 42 U.S. § 1973. These plans result in a denial or abridgement of the right to vote of individual plaintiffs and organizational plaintiff's members 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 redistricting plans passed by the Texas Legislature on June 1 and 3, 2013, do not afford individual plaintiffs and organizational plaintiff's members an equal opportunity to participate in the political process and to elect representatives of their choice, and deny individual plaintiffs and organizational plaintiff's members 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 III**

61. The allegations contained in paragraphs 1-60 are alleged as if fully set forth herein.

62. The 2011 redistricting plans adopted by the Texas Legislature were developed with the intent to disadvantage African-American and other minority voters. That intentional

discrimination is in 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 IV**

63. The allegations contained in paragraphs 1-62 are alleged as if fully set forth herein.

64. The 2013 redistricting plans adopted by the Texas Legislature were developed in such a way and with the intent persisting from the 2011 plans to disadvantage African-American and other minority voters. Specifically, the 2013 redistricting plans retain elements of the 2011 redistricting plans that were undeniably motivated by unconstitutional desires to minimize and exclude the political voice of voters of color in the state. This intentional discrimination is in 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 V**

65. The allegations contained in paragraphs 1-64 are alleged as if fully set forth herein.

66. The 2011 and 2013 Congressional and State House redistricting plans adopted by the Texas Legislature are so rife with an intent to discriminate against minority voters that Plaintiffs and all minority voters in Texas are entitled to equitable relief under Section 3(c) of the Voting Rights Act, 42 U.S.C. § 1973.

**BASIS FOR EQUITABLE RELIEF**

67. NAACP Plaintiff-Intervenors have 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.

68. NAACP Plaintiff-Intervenors 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**

69. In accordance with 42 U.S.C. Section 1973-1(e) and 1988, NAACP Plaintiffs are entitled to recover reasonable attorney's fees, expenses and costs.

#### **PRAYER**

NAACP Plaintiff-Intervenors respectfully pray that this Court enter Judgment granting:

A. A declaratory judgment that State Defendants' actions violate the rights of Plaintiffs as protected by Section 2 of the Voting Rights Act, 42 U.S.C. § 1973 et seq., and the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983; and

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 African American and minority voting strength for the Texas House of Representatives and the United States House of Representatives, and enjoining and forbidding the use of the newly-enacted congressional and State House redistricting plans; and



- C. An order requiring the State of Texas to submit to this Court for preclearance, under Section 3(c) of the Voting Rights Act, any change to any voting practice or procedure, including but not limited to any new redistricting plan, for a period not less than 10 years; and
- D. If need be, adopt an interim electoral plan for the 2014 elections for United States Congress and Texas House of Representatives that remedy these statutory and constitutional flaws; and
- E. An order of this Court retaining jurisdiction over this matter until all Defendants have complied with all orders and mandates of this Court; and
- F. An order requiring Defendants to pay all costs including reasonable attorneys' fees, and
- G. Such other and further relief as the Court may deem just and proper.

Dated: September 18, 2013.

Respectfully Submitted,

/s/ Allison J. Riggs

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent via the Court's electronic notification system or email to the following on September 18, 2013:

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